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Canada, Dominion-Provincial Relations, Royal Commission
on, 1937.

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NEW BRUNSWICK

[New Brunswick]

SUBMISSION

BY

THE GOVERNMENT OF THE PROVINCE

OF NEW BRUNSWICK

TO THE

ROYAL COMMISSION

ON

DOMINION-PROVINCIAL RELATIONS

APRIL, 1938

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SUBMISSION

by

THE GOVERNMENT OF THE PROVINCE
OF NEW BRUNSWICK

to the

ROYAL COMMISSION

on

DOMINION - PROVINCIAL RELATIONS

PART I

We welcome the members of the Royal Commission to the Province and are much pleased to have an opportunity of presenting some considerations which it is hoped will meet with approval.

Before referring particularly to the case of New Brunswick we venture to submit a plan to be adopted in the consideration of Dominion-Provincial financial relations.

Our submission is that, apart from the adjustment of any special claims by a province against the Dominion, increased allowances be provided, so far as possible from time to time, by conditional subsidies; that such allowances be based upon the principle of fiscal need; that, in respect of services which are held to be within provincial jurisdiction, administration by the Province with grants-in-aid from the Dominion will prove most efficient that such grants-in-aid be paid in each case as directly as may be practicable to or for the benefit of the individuals or the particular service to be assisted; that it is most desirable that the existing difficulties be overcome so far as reasonably

possible within the limits of the present constitutional provisions, and that there be closer contact and co-operation between the Dominion and the provinces through a department of state for the provinces at Ottawa and departments of federal relations in the provinces.

In addition to increased annual grants generally, some provinces will ask that special allowances be provided to render more effective certain services which are within provincial jurisdiction, such as those relating to social matters generally and to the treatment of tuberculosis, to public health, mental cases and education.

It has been represented that certain Provincial Governments, having substantially exhausted taxation possibilities within the Province, have not been able to afford to their people in respect of the above mentioned matters the same advantages as those enjoyed by persons residing in what might be termed the wealthier Provinces.

Our submission is that these services should be administered by the Province with the assistance of the Dominion, but that every payment should be appropriated to the particular object for which the allowance is made and that there should be means afforded whereby the Dominion might have a constant check on expenditures.

We agree with the statement which the Honourable Mr. Dunning is reported to have made recently that "the solution of our problems can be found within the principles of the British North America Act laid down seventy years ago."

We are not without the experience resulting from a definite application of this principle.

A proposition was made to the provinces by the Dominion in respect of old age pensions. It did not involve an amendment to the Constitution. It was designed to assist the Provinces in carrying on what then was regarded as a necessary public service within provincial jurisdiction.

This scheme has been concurred in by all the provinces. It has now been extended to pensions for the blind. The Dominion pays 75% of old age pensions and of pensions for the blind. The expense of administration is borne by the Province.

Every pension payment must be approved by the Dominion. The Dominion has a constant check upon expenditures and each cheque goes direct to the pensioner. We recommend this plan with respect to additional contributions of the Dominion to the provinces which are to be applied to special purposes. It may not be possible to reach the individual as in the case of a pensioner, but we could reach the local authorities, the idea being to come as closely as possible to the people. One important consideration is that the arrangements are capable of adjustment from time to time as conditions may warrant.

The manner in which this plan has been carried out is an object lesson. It has provided a closer contact between the Dominion and the provinces. Whatever slight difficulties arose during the years of operation were ironed out at a conference held last year. Under the chairmanship of the Honourable Mr. Dunning, the representatives of all the provinces, by a round table discussion, were able to agree unanimously in regard to all matters in question.

The experience is that by closer co-operation and association much can be done to reconcile conflicting views. There has been too much "arms length" procedure in Dominion-Provincial relations.

The contributions reach the people directly. There is no possibility of the money being used for other purposes. In grants of lump sums to the provinces there is always the danger that, even though the money is earmarked, it may be used by reason of financial exigency for unauthorized purposes.

Our submission is that any necessary assistance to the provinces in respect of the special matters referred to and others as may appear necessary to be dealt with be afforded as nearly as may be practicable on the same principle and in the same manner as that which applies in the case of old age pensions and pensions for the blind.

The plan does not involve any encroachment by the Dominion on provincial rights. It simply enables the Dominion to know that the money it contributes is expended as authorized.

In a later part of the brief we refer again to the question of fiscal need, but we wish to emphasize here that under the plan we suggest there is not only the fiscal need of the province

to be considered, but it is the need of the individual. In old age pensions the relief has gone directly to the individual—the needy individual. Our suggestion is to apply the same system to the needs of the individual, so far as it can be reasonably worked out, and we base our plan upon those two considerations, first, the fiscal need of the Province and, second, the need of the individual in the Province. As above stated it may be difficult to apply the proposed assistance directly to the individual as in the case of old age pensions, but it can be applied, in connection with health matters, care of the insane, agricultural and technical education and many other social services quite immediately to the individual.

It may be alleged that Dominion administration would be more efficient. We doubt that. The history of the Dominion discloses that there has been no less recklessness and improvidence in administration than has prevailed in the provinces.

It is said that the authority expending money should be charged with the responsibility of collecting it. This may or may not be true in general, but it would not apply here.

The Province, in making grants for pensions, is spending its own money as well as that of the Dominion. The Dominion has supervision over every expenditure. There are the two authorities operating which makes for economy and efficiency. It has been found in practice by large business firms with many branches that it is wise to have administration by people having local knowledge at the branches, with supervision by the central office.

There is always a tendency, when the business is managed from a distance for the head office to be influenced too much by the conditions close at hand and by the business in those sections where the larger operation of the trade is carried on. There is necessity for direct contact with the people of the outlying districts and this can be established through a local administration.

In further support of our submission we quote the following statements contained in "The Principles and Problems of Federal Finance" by B. P. Adarkar, Professor of Economics, Benares Hindu University, with a foreword by Sir Cecil H. Kisch, K.C.I.E., C.B. (Published in London by P. S. King and Son, Ltd., 1933), referred to by Professor W. A. Carrothers, Chairman Economic Council of British Columbia, in his article

in the Canadian Journal of Economics, February, 1935, (page 30):—

“When the world returns once again to a mood of sanity, the first lesson that it will have to learn will be that inferior political entities, like the states and local bodies, are more suitable agencies for carrying out the peaceful activities of social welfare and that though administrative co-ordination is an essential element in the matter, finance must be more and more decentralized in order that the aims of human progress may be achieved.”

And at page 35 speaking of subsidy payments he quoted:—

“They have some value as stop-gaps during a transitional stage in the first days of federation but as a permanent arrangement are entirely unsuitable.”

“The most distinctive feature of this method is that the payments are made for specific purposes, and subject to the condition that the function concerned is efficiently discharged generally under the supervision and control of federal administrative machinery. If inefficiency is proved, the grants may be withdrawn. A liberal use of the method of subventions may be used as one of the principal ways to secure equalization of conditions between states and localities.”

It seems to us to be most desirable that the additional allowances to be made in respect to any of the special matters above referred to should reach the people of the Province as directly as possible. The people have endured the burden of providing for these matters. They have been taxed beyond the limit of endurance for the treatment and prevention of tuberculosis, for the maintenance of the insane, for the destitute within the several municipalities and for the support of the country schools. They have been handicapped in life through the lack of the facilities for technical and agricultural education which are afforded to those residing in other provinces.

The present situation in Canada is largely the result of the changed attitude in the majority of the people toward those less fortunate and to the constant improvements in living conditions now regarded as necessities.

These constitute the basic elements that account for the recurring deficits in provincial administrations.

At the time of Confederation no provision was made to meet a situation of this character. It was not then foreseen that such conditions would arise. There will be a continuous improvement provided in future in the living conditions of the needy. It has become a national question.

Some provinces, with their limited means of taxation, have not been able to meet these necessities and it is only reasonable that the Dominion with its large taxation powers should contribute a fair proportion of the money required for these purposes.

In matters of public health, the prevention and treatment of tuberculosis and cancer, care for the insane, hospitalization, and other like matters, in education, improvements of the means of transportation by the construction of hard-surfaced roads, in old age pensions, pensions for the blind, mothers' allowances, child welfare and other social services, these conditions are most pronounced. No person can well say that any of these services should be curtailed. That they will be continued and enlarged upon as time passes is without question.

The advantages of the plan may be summarized:—

(1) No amendment to the British North America Act is required.

(2) Any arrangement made between the Dominion and the Province can be readily modified at such time or times as conditions warrant.

(3) The remedy will be applied to the particular necessity.

(4) It would carry the money contributed more or less directly to the people and not to the Provincial Government.

(5) No dispute could arise because every payment is agreed upon beforehand.

(6) Economy will be assured by reason of the agreement between the two separate and distinct authorities as to each expenditure.

(7) The plan would involve a closer association between the representatives of the Dominion and those of the provinces.

SECRETARY OF STATE FOR THE PROVINCES

There was after Confederation a Department of Secretary of State for the Provinces. It was abandoned. It should have been continued and should be reinstated. For years there has been no close co-operation between the Dominion and the provinces. The Dominion has had its commissioners at the capitals of foreign countries and in England but there is nothing of the kind as regards the provinces. The Dominion has not regarded the provinces as independent sovereign states. It has often forgotten that it was created by the provinces and that it exists by reason of the will of the provinces. It has too long adopted and followed out the wrong attitude in this regard and many of the difficulties that now confront the Confederation have arisen because of this attitude. Everything became centralized in Ontario and Quebec.

This Department should be revived, and there should be in each province a department of the government respecting federal relations as there now is in New Brunswick.

It will be admitted by all who attended the Dunning Conference that it was the ideal method of arranging matters affecting the interests of all the parties not only in detail but in principle. There has been too little regard for the benefits to be derived from conferences of that kind. The adoption of the plan which we suggest would have the effect of drawing closer together the men in authority in the provinces and in the Dominion. If the Dominion and the provinces are contributing to a plan of assistance to the provinces it must necessarily draw them together for an exchange of views and the consideration of mutual interests. That is what the Dunning Conference did for old age pensions. There is no reason why it could not be done in reference to all other matters which may arise. Any plan which will bring the different interests together around the table is the solution of many difficulties.

If there were these new departments of the several governments established a definite knowledge of any difference could readily be obtained.

It has been suggested in another province that a commis-

sion should be set up with power to determine and recommend with reference to grants to the provinces. We submit that under the scheme we propose such a commission would not be necessary. All of the facts from time to time would be available at Ottawa and to the several provincial governments through the Department of the Secretary of State for the Provinces.

All of the provinces are desirous of making a success of Confederation. What would be said of a large business organization with many branches which endeavoured to carry on successfully without a close and constant association between its component parts?

IN OTHER CASES

In the case of a province which claims that unless assistance is provided it must make default in payment of its obligations a different treatment is necessary.

Neither the Dominion nor any of the provinces can afford to have a province make default. It is a blow at the credit of all the family.

Therefore the Dominion must come in. The Dominion will grant assistance by means of a loan or a guarantee upon the condition that it have control of some part of the provincial finances until such time as the advances are repaid.

Such a province must be helped through its government and not directly through the people. The distress of the government probably will have been due to the fact that it has provided too generously for the people rather than too inadequately.

As to this we quote from the report of the White Commission at page 6:

“When any province is in such a necessitous condition, with its own credit exhausted, it is, of course, proper for the Dominion Government, if it deems the maintenance of provincial credit to be of national importance, to come to the aid of that province by way of a guarantee of its temporary borrowings or of a direct loan to be repaid with interest as soon as, by reason of improved conditions, or of economies effected by the province, its credit has been restored and it is thus enabled to extricate itself from its financial difficulties.”

ADMINISTRATION BY THE DOMINION

It has been put forward that certain of these public services and the jurisdiction with respect thereto should be wholly transferred to Dominion control. We have already quoted Professor Adarkar.

This would involve amendments to the Constitution.

At Confederation the provinces retained certain rights, privileges and jurisdictions which were then regarded as fair and reasonable. At the present time, under changed conditions, it may appear that some of these special matters could be better dealt with by the Dominion. The conditions however may again change.

It must not be understood that the Province of New Brunswick is opposed to changes in the Constitution in cases where such changes may be absolutely necessary but, in respect to changes, great care should be exercised before a Provincial Government in 1938 should take the responsibility of relinquishing control for all time of powers which were guaranteed by Confederation.

We have to consider that in time to come changing condition may make it advisable for the Province to invoke powers which, at the present time, may appear to be of no importance to the Provincial system and we should guard against the possibility of it being said that a Provincial Government assumed the power and discretion of determining what might or might not be essential in the development of our Confederation system.

Any amendment to the British North America Act involves much negotiation, delay and difficulty. Then, when it is made, the intention is not always secured. There probably has never been an important Act of Parliament which has not given rise to litigation. When the Act of British North America was passed it was no doubt thought to provide plainly for what was present in the minds of its framers, but scores of cases have been before the courts involving the construction of its provisions. Why have we any right to assume that the amendment would not give rise to controversy? Supposing some of these matters were passed over to the Dominion, have we any assurance that the administration would bring about the desired result? The policies of the Dominion Government from time to time have had the

effect of centralizing industry and wealth in the provinces of Ontario and Quebec. Is there any guarantee that future activities of the Dominion would result any less unfavourably in the outlying provinces?

FISCAL NEED

It is quite apparent from the record that the grants to the provinces have always been based upon the principle of fiscal need.

Sir Wilfred Laurier, then Premier of Canada, in 1907, stated in Parliament as follows:

“Why was the basis fixed in 1864 for the allotment of eighty cents? I have searched for the reason and the only one I can find is this, that a calculation was made by the Minister of Finance of the various provinces according to the statement by Colonel Grey, by Mr. Brown, by Dr. Tupper, by Sir Leonard Tilley, by Mr. Shay and others, and they came to the conclusion that this would be a fair basis upon which to meet the wants of the provinces. That was their judgment and in 1906 we took as a basis of judgment of the Ministers of the several provinces assembled with us, who told us that according to their experience this was the amount they needed in order to carry on their public affairs. They had no other basis than that.”

Our submission is that increased grants to the provinces should be made upon the principle of fiscal need but we do not agree with the proposition that the same relative assistance should be necessarily granted to all the provinces. It disregards the fundamental principle underlying Confederation.

We agree that the principle of fiscal need must be applied to all of the provinces, but in the application of it, the fiscal need of each province should be considered separately.

If some of the provinces through the operation of the Confederation system, have been placed in such a position that they are able to provide reasonably for all the services which are held to be within their jurisdiction, they are not entitled to any further allowance upon the principle of fiscal need or otherwise, simply because some other provinces have become unable to provide for such services. The fiscal need of one province may be quite different from the fiscal need of another province.

The Act of British North America was designed to accomplish the welfare of all the provinces. If, for example, the Province of New Brunswick with its limited taxation possibilities, is not able to provide for its people the same privileges which are enjoyed by those in other provinces, New Brunswick should be placed in such a position through assistance by the Dominion that living conditions be on a par with those obtaining elsewhere.

The burden of providing further allowances to provinces where fiscal need is apparent and to no other provinces, would result in lightening the burden upon the Dominion Treasury. The condition which has arisen in Canada today is partly due to the fact that the wealth is centralized in one or two provinces and the future of the Dominion depends upon a proper adjustment of revenue, and the consideration of the resources of the one province as compared with other provinces. We do not advocate a redistribution of all the wealth in Canada but what we say is that, to the extent that allowances are necessary in some provinces, the burden should fall upon the provinces which have most profited by the operation of the Confederation system.

As a further illustration, the fiscal need of a province today may be quite different from the fiscal need of the same province five years hence. Readjustments from time to time in the allowances to be granted may be readily made through the offices of the proposed Department of State for the Provinces and the Departments of Federal Relations in the Provinces. As we have before stated, the officials of these departments will have a constant knowledge of conditions in every province and allowances will be granted only as they are needed. These permanent government agents will answer the same purpose as a Grants Commission which is advocated by some authorities. The province may discover, as did the Province of Ontario, that there is an unexpected development of mineral wealth. If such a condition arose as regards one of the now lesser provinces fiscal need might no longer exist.

The difficulties cannot be overcome by a readjustment of subsidies on a per capita basis or by a readjustment of subsidies generally on a relative basis. Such an adjustment must necessarily become unfair, if we have regard to the purposes of Confederation, when conditions change. It would be necessary under that system to readjust the Dominion subsidies every few years.

Suppose, for example, that there should be a province in

Canada, where the financial situation was so acute that there could not be any provision by the province for purposes of national importance, such as the care of the insane, the prevention and treatment of diseases, the provision for the destitute or for education, how can it logically be said that no allowance should be made to that province unless the same allowance relatively is made to all the other provinces even though some of the others, through their mines, industries and other sources of wealth, would be more than capable of providing for all the services which are in the control of the provinces?

The following remarks contained in an article by Professor W. A. Carrothers, Director of Economics in British Columbia, published in the *Canadian Journal of Economics and Political Science*, February, 1935, where he refers more particularly to tariff matters, have a bearing upon the question we have just outlined. He stated (page 35):—

“If Canada has been unhappy in the matter of subsidies, she has also been unhappy in the matter of subventions. Grants have been made from time to time by the federal government to the provinces for various purposes, such as road construction, technical and agricultural education, etc. The method by which these grants have been made have again favoured the wealthier provinces as usually these grants have involved an equal expenditure on the part of the province concerned. This principle, however, could be modified in order to bring about greater fairness. As mentioned above, the main report of the Nova Scotia Royal Commission of Economic Inquiry recommends (p. 86) that the subsidies should be subject to periodic review and that this review should be based on some definite principle. A similar recommendation is made by Professor Rogers, who suggests that the principle of revision should ‘bear an intelligible relation to the relative wealth and revenue capacity of the various Provinces’ (p. 194). It is suggested that such revision should take place once in five or ten years. Professor Innis recommends more frequent revision (p. 219), and it is not impossible that revision machinery could be set up which would operate continuously. With more adequate provincial statistics it would be possible to determine with a great degree of accuracy the actual net cost to each province of the Dominion tariff policy. It would also be possible, by properly constructed indices, to determine the taxable capacity of each province. These indices, combined

with an examination of the fiscal requirements of the province, would form a basis on which the necessary subsidy could be determined each year."

The Dominion has recognized fiscal need in the inadequacies of subsidies as a provision for the services with which the provinces were charged. It granted subventions on a temporary character, for agricultural and technical education and for other matters. The grants were made contingent upon the provinces contributing a certain proportion of the cost of these services. Subject to this contingency the grants were made to apply to every province whether they were needed or not. At least one of the provinces was not able to take advantage of these subventions for the reason that it could not supply the proportion of the money required. This resulted, in effect, in an additional burden on such province and in an additional benefit to the provinces which were able to take advantage of the scheme. That principle is what we wish to avoid. The plan we propose is not that the small province is to be further burdened by grants to the other wealthier provinces, but that it will be assisted without regard to the other provinces.

These subventions had the effect of encouraging the provinces to embark upon ambitious schemes of development in respect to the matters to which the subventions related. But the assistance was discontinued by the Dominion after a few years and the provinces were left in a position where they must either abandon the services or keep them up at the sacrifice of necessities.

It is here to be observed that the White Commission distinctly rejected the principle of fiscal need in the determination of its finding. At page 7 of the report it is stated "For the foregoing reasons we feel obliged to reject this proposed test of fiscal need and proceed to consider upon other grounds the claims of the Maritime Provinces for increased subsidies under the caption to this section". The same is true as to the Duncan Commission.

It will thus be seen that the claims of New Brunswick have not been as yet considered on the principle of fiscal need.

THE POSITION OF NEW BRUNSWICK

While the bonded indebtedness of the province has increased rapidly during the last few decades, it has not been due to extravagant administration but rather to changing conditions, the necessity of modern roads and bridges and provision for social services formerly undreamed of.

The following table, which is taken from the report of the Comptroller General for the fiscal year ending October 31st, 1936, at page A58, shows the bonds outstanding at that time and the purposes for which the same were originally issued.

Subsidies to Railways:

Chatham Branch	\$ 56,000.00
Petitecodiac Branch Elgin Railway	69,000.00
Andover Branch	51,000.00
St. Martins and Upham	131,000.00
Grand Southern	374,000.00
Kent Northern	135,200.00
N. B. & P. E. I.	105,000.00
Harvey Branch	9,000.00
Caraquet	180,000.00
Canada Eastern	321,500.00
St. Louis Richibucto and Buctouche Railway ..	21,000.00
Elgin, Petitecodiac and Havelock	37,000.00
Moncton and Buctouche	94,000.00
Albert Southern	48,500.00
St. Stephen and Milltown	14,000.00
Black Brook and Nelson Branches	4,000.00
Temiscouata	66,000.00
Tobique Valley	70,000.00
Gulf Shore	42,000.00
International	175,000.00
York and Carleton	26,000.00
Beersville	16,000.00
	<hr/>
	\$2,045,200.00
Less: Redeemed Bonds	\$447,500.00
Registered Stock	377,000.00
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	824,500.00 \$ 1,220,700.00

N. B. Coal and Railway and Central Subsidy Guarantee	1,246,431.77
Funded Debt, 1908	225,143.93
Funded Debt, 1883	250,000.00
Public Works Overdraft, October, 1906	\$ 197,065.97
Provincial Hospital Overdraft, October 31, 1906	22,502.31
	<hr/>
	\$ 219,568.28
Less: Registered Stock Redeemed	65,070.82
	<hr/>
Freshets, etc.	150,000.00
Permanent Bridges	11,005,359.00
Reversing Falls Bridge, Saint John	416,788.63
Saint John Bridge Extension (Subsidy)	5,500.00
Meduxnakeag Bridge	10,000.00
Wharves and Grain Elevator Saint John	32,500.00
Dufferin and Eaton Wharves	8,000.00
Provincial Hospital	1,448,000.00
Surplus Issue	490.89
Discount Issue, 60 Vic. Cap 4	36,363.73
Jordan Sanatorium	59,000.00
Normal School Annex	60,000.00
Bishopcote and O'Connor and Merrithew Buildings	25,500.00
Farm Settlement Board	220,000.00
Permanent Roads	32,007,450.00
Saint John and Quebec Railway	1,319,977.40
Funded Debt, 1917	700,666.66
Funded Debt, 1922	520,000.00
Funded Debt, Issue of 1925	709,080.00
N. B. Electric Power Commission	7,965,500.00
Saint John and Quebec Railway Operation	1,271,470.00
Boys' Industrial Home	30,000.00
University of New Brunswick	484,600.00
Vocational Buildings	124,000.00
British Family Settlement	785,000.00
Provincial Building, Saint John	130,000.00
Woodstock Cold Storage	10,000.00
New Normal School	391,400.00
British Canadian Packing Co.	205,000.00
Municipal Unemployment	560,000.00
Provincial Museum	170,000.00
Discount and Exchange	668,000.00
Land Clearing Bonus	42,500.00
Floating Debt, Issue of 1932	1,833,000.00

Direct Relief	900,000.00
Canadian Farm Loans	30,000.00
Sprinkler System	30,000.00
Floating Debt, Issue of 1934	377,000.00
Hard Surface Roads	4,600,000.00
Floating Debt, Issue of 1935	876,000.00
Floating Debt, Issue of 1936	700,000.00
Construction of Offices, Smith Foundry Building	21,000.00
Various Purposes, Covered by Debentures Matured, not Presented for Payment	14,000.00
Total	<u>\$74,049,919.90</u>

It will be seen that of the total amount approximately \$68,000,000 of these bonds were issued for the purpose of purely capital expenditures. The sinking fund at the end of 1936 was \$8,816,470.85.

Apart from that portion of the debt above referred to, the balance was incurred from time to time for the purpose of funding floating indebtedness or, in other words, to provide for deficits. The following is a statement of surpluses and deficits for the past twenty years, from which it will be seen that in only four years was there a surplus.

Year	Surplus	Deficit
1917		\$572,072.06
1918		789,000.00
1919		327,686.22
1920		156,002.91
1921		307,132.51
1922		189,511.42
1923		524,611.55
1924		248,129.31
1925		756,589.51
1926		61,523.44
1927	\$ 15,792.64	
1928	198,209.36	
1929	9,377.80	
1930		635,129.27
1931		780,505.90
1932		565,263.38
1933		429,517.04
1934		876,551.69
1935		703,116.84
1936		424,969.40
1937	29,090.98	

In the Auditor's report for 1937 we find that the total revenue of the province was \$7,869,483.33, the largest in its history. Of this amount \$3,103,506.58 was paid for interest and \$295,953.00 for sinking funds and \$20,000.00 serial debentures redeemed making a total of \$3,419,459.58 or almost one half of the revenue.

The balance of the expenditure for the year, amounting to \$4,420,932 given generally under the various departments, was made up as follows:—

Department of the Attorney General	\$ 180,740.17
Department of Agriculture	240,644.18
Department of Lands and Mines	425,925.24
Department of Public Works (including Motor Vehicle Law administration)	1,259,699.52
Department of Public Health	153,355.56
Department of Education	790,071.41
Department of Federal-Municipal Relations	16,409.65
Old Age Pensions	501,519.44
Department of Provincial Secy.-Treasurer	176,957.27
Legislation	76,984.86
Executive Council	11,975.14
Various Services	586,650.33
	<hr/>
	\$ 4,420,932.77

Included in the expenditure under the Department of the Attorney-General is \$100,000 for the Royal Canadian Mounted Police.

The amount listed under the heading of Various Services is composed of the following items:

Boy's Industrial Home	\$ 34,683.73
Jordan Memorial Sanitorium	115,218.78
Bureau of Information, &c.	46,027.67
Provincial Hospital	306,824.40
Tuberculosis Aid	83,895.75

From the foregoing it may be observed that education, old age pensions and public health, including these services with the exception of the item for the Bureau of Information, cost the Province \$1,985,569.07, or over one quarter of the total revenue.

The interest, of course, is a fixed charge—the expense of

education and public health practically so. These things have become necessities and there is no possibility of cutting the expense down. In fact, it should be largely increased if the public is to have complete service along these lines. For instance, there is no provision for the care of mental defectives, and something along this line must be done in the near future.

This leaves \$2,464,454.68 of revenue out of which to provide for the administration of justice, the development of agriculture, the conservation and protection of our greatest asset, the Crown lands, public works and all the other demands upon the government.

One can readily conclude, we think, that unless governments had been economical the deficits must have been far larger than has been the fact. And it must further plainly appear that with the ever increasing obligations of the government along the lines of social activity and relief, some readjustment must be made.

Even if this Commission should not be of the opinion that governments in the past have carried on the business of the Province in an economical manner, with the result that the funded debt has reached its present proportions, it is still a fact that such debt exists, entailing the relatively large fixed charge for interest each year. This inquiry, as we understand it, looks to the future and any changes which may be the outcome of it must necessarily be based upon conditions as they presently exist.

In view of the research work now being carried on by this Commission it has not been considered desirable to encumber this Brief with exhaustive statistical information.

The Chairman of the Commission has stated that after the report in connection with this research work is made, the Province will have an opportunity of filing an additional Brief with reference to any questions arising out of the report. We, therefore, expect to take advantage of that opportunity.

In submitting the claims of New Brunswick we do not wish to be understood as demanding any definite sums of money from the Dominion. We are stating facts with the object of showing the needs of the Province. Further facts will be obtained from the researches now being made under the authority of this Commission.

We also suggest remedies which may be applied in certain cases, and we are submitting the views held by the Province in reference to the matters with which the Commission has to deal.

In short, we are endeavouring in this Brief to present a picture of the situation as we see it.

It is then for the Commission to make recommendations.

The Province is not approaching this Commission upon the theory that it is bankrupt. There has been no default by it or by a municipality in the payment of liabilities and there is no intention of repudiating any obligation.

The present situation has been brought about, not for the reason that we have had what may be regarded in modern times as sufficient income, but because the Province has administered its affairs frugally. It has not been possible to furnish our people the same assistance along the lines of social services, education, health and other matters commensurate with those furnished to the people of some other provinces. Our people have not had the same governmental assistance in reference to many public services that are enjoyed by people elsewhere. The men and women of our Province have buckled down to work, and have taken as necessity compelled them, whatever measures were possible in working out their livelihood.

Our Government has now adopted measures in regard to the encouragement of export trade, mineral development and industries which it is hoped may enable us to provide a higher standard of living than now prevails.

But, although we are not in a hopeless position, it is necessary for us to have further financial assistance from the Dominion. We feel that the people of New Brunswick are entitled to the same standard of living as prevails in other provinces.

Through the operation of a protective tariff, from their geographical position and by reason of the fact that many hundreds of millions of dollars have been spent on the canals and on the development of the St. Lawrence River, and that Ontario and Quebec have received vast areas of public lands containing great wealth, those provinces have become relatively wealthy.

The Royal Commission, headed by Sir Andrew Duncan, made some important findings with respect to the problems of the Maritime Provinces and recommended that an interim subsidy award be made to each of the provinces.

The White Commission recommended that the subsidy award be increased to the sum of \$900,000 per year, but based its findings on considerations other than those of fiscal need, which principle was distinctly rejected (page 7).

We have accepted the above mentioned amount but regard it simply as an attempt to settle inequalities in respect to the subsidy arrangements existing between the provinces and the Dominion. We have not accepted it as a final settlement of the fiscal relations that now exist nor have we regarded it as a full settlement of all further demands. In the Duncan Report, page 15, it is stated:—

“We have gone over the provincial accounts of the three provinces in detail. The scope of administration—take public works as an example—has certainly increased, and it is not easy to draw a hard and fast line as to where government machinery ends. But many departments of their activity are being run at a surprisingly low cost, and we feel satisfied that they certainly are not on the whole incurring unreasonable expenditure. Nor do we feel that in view of the burdens they are carrying they can be expected to meet from their own revenues the increased cost of their machinery of government.”

and at page 16:—

“Their present revenues from provincial taxation are insufficient to balance their budget, and do not provide sufficiently for depreciation through sinking funds. Their capital expenditure, too, has been increasing. We are bound to keep in mind that the depressed condition of the Maritime Provinces, the contraction there has been in the revenue from their natural resources (which in the case of Nova Scotia has been accentuated by industrial troubles) and the absence of large scale commercial and industrial enterprises make the problem of provincial taxation for them a very serious one indeed, especially when regard is had to the extent to which the Dominion has itself invaded the field of direct taxation which was open to the provincial legis-

latures under the British North America Act of 1867 (Sec. 92)."

"On this question of adequacy of provincial taxation, we feel that 'per capita' yield is not an entirely fair measure to apply. Regard must be had to the value of the production of the provinces. Applying the test of 'unit of production' yield, we find, from the information shown in the publications of the Dominion Bureau of Statistics, that the average for all Canada (so far as provincial taxation is concerned) is less than 2.5 per cent on gross value, while in the Maritimes it is over 3 per cent. We are satisfied that they do recognize that provinces are expected to supplement their revenues from sources of their own, and that their present financial position does not arise from any misconception such as that provinces should be free to spend as they like and to look to the Government to meet the bill. A review of their financial operations over a long period suggests frugal expenditure. On a full consideration of their arguments and their circumstances, we think the Maritime Provinces have made out a case for a revision of the grant from the Dominion in support of their government machinery and activity."

In the White Report is the following at page 12:—

"The comparative statistics referred to show, however, that while their capital expenditures ever since 1920 have unquestionably been excessive, they have not exhibited a higher scale of increase from year to year than some of the other provinces. Their increase in this respect appears, however, to be higher than the average of all the provinces of Canada. Outside of capital expenditures the administration of all three Maritime Provinces appears to us to have been quite economical and even, as characterized by the Duncan Commission, 'frugal'. The salaries paid to their ministers of the Crown, officials and other public servants and the limited provision made for social services are on a much lower scale than that prevailing in the other provinces."

New Brunswick has not been able to provide for necessary public services to an extent equal to that prevailing in the Province of Nova Scotia.

It will be found that the expenditures made by New Brunswick since the White Report have been frugal.

Of course, there is the necessary increase in public debt due to the construction of permanent highways and this matter will be referred to later.

It is also to be observed that since the report of the White Commission, increased expenditures have been made by the Province for necessary public services.

The principal increases made in 1937 over and above the expenditures in 1935 are as follows:—

Old Age Pensions	\$501,000
Provincial Health Institutions	43,000
Department of Labour	20,000
Education	81,000
Agriculture, extension services	22,000
Dairying	11,000
Agricultural Relief	16,000
Colonization	38,000
Highways	168,000
Bridges	35,000
	<hr/>
	\$935,000

And we have not been able to provide for mothers' allowances, child welfare or, adequately, for many services hereinafter particularly mentioned.

TAXATION CAPACITY

New Brunswick has practically exhausted the capacity of the people to pay taxes.

We refer again to the findings of the Duncan Commission hereinbefore set out with reference to the economic conditions in the provinces.

From the inquiry which is now being made by this Commission, it will no doubt be demonstrated that the Province of New Brunswick is unable to provide for the services which are now demanded by the people of the Province and which it is the duty of the Province to provide for in some manner on a par with the provision made in other provinces. Whether there is some method whereby a small additional revenue can be extracted from a needy people is not material. It is not a matter for delicate technical examination. The question must be looked at reasonably and in a broad way.

In this Province taxes are imposed by municipalities directly upon the rate-payers for municipal purposes, for education, for tuberculosis, for the support of the poor and the repairs of the ordinary country roads. Included in the municipal tax is provision for assistance to hospitals and to provide for the support of insane persons.

Each parish is required to pay for the support of insane patients whose home is in the parish. Some of the rural municipalities have not been able to collect the taxes for these purposes for some years and the collection generally of municipal taxes has been most difficult. It has reached the position today where it is absolutely impossible to impose any further tax burdens in country places and the same is true largely with reference to the cities and towns. There is urgent necessity that the Province shall wholly assume the expense of the treatment and prevention of tuberculosis and the maintenance and care of insane persons. Provision must be made in the immediate future for the segregation and maintenance of the feeble minded, and for mothers' allowances, child welfare and other social services.

The operation of Dominion policies, especially with reference to the tariff and the excessive burdens of freight and transportation, as indicated in other parts of this submission, have so depleted the resources of the inhabitants of this Province

that they are unable to provide for themselves a standard of living and social services comparable with those in other provinces.

The following table compiled from a special report by the Dominion statistician shows a comparison of the purchasing power of the several provinces based on a per capita system of national income by provinces.

Prince Edward Island	\$203
Saskatchewan	220
NEW BRUNSWICK	237
Alberta	274
Nova Scotia	288
Manitoba	307
Quebec	372
British Columbia	513
Ontario	540

The average family income in New Brunswick is \$826.40, while in the Provinces of Quebec and Ontario such income is \$1,700.50. The family income in New Brunswick falls short of providing for the family budget while in the other provinces there is a surplus over the family budget of \$907.60 per year. The above is computed by the Dominion statistician and is taken from "The Maritime Provinces in Their Relation to the National Economy of Canada", 1934, page 104, table 2.

In 1871 the population of New Brunswick was	285,594
and in 1931	408,219

That of Ontario in 1871 was	1,620,851
and in 1931	3,431,683

In Quebec in 1871 the population was	1,191,516
and in 1931	2,874,255

**The Following Table Shows the Number of Persons Employed in
Manufacturing Industry in Canada and in the Province
of New Brunswick 1870—1935.**

Year	No. of Employees	
	New Brunswick	Canada
1870	18,352	187,942
1880	19,922	254,935
1890	26,675	369,595
1900	22,158	339,173
1910	24,755	515,203
1917	20,201	621,694
1918	18,443	618,305
1919	22,262	611,008
1920	19,241	609,586
1921	12,441	456,076
1922	14,351	474,430
1923	16,221	525,267
1924	15,805	508,503
1925	17,275	544,225
1926	17,674	581,539
1927	18,970	618,933
1928	17,963	658,023
1929	18,517	694,434
1930	18,422	644,439
1931	13,107	557,426
1932	11,987	495,398
1933	11,994	493,903
1934	13,522	545,162
1935	13,937	582,874

No. of Employees in 1935 compared to No. of Employees in 1870 (%)	75.9%	310.1%
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It will be noticed that in 1935 New Brunswick employed only 75.9 per cent of the number employed in 1870. Canada, as a whole, has increased the number employed by 310.1 per cent.

The movement of population is important in the consideration of this question of taxation capacity. The following extract from "The Maritime Provinces in Their Relation to the National Economy of Canada", issued by the Department of Trade and Commerce, summarizes the statistical record relating to the population of the Maritime Provinces:—

“Emigration from the Maritimes has been in evidence in every decade since Confederation, although the most considerable movement occurred in the last decade and in the eighties and nineties. From 1891 to 1901 the immigrant arrivals were not even sufficient to balance the departures of former immigrants; while emigration from the Maritime Provinces almost cancelled the natural increase of the native-born. The magnitude of the emigration of the native-born may be illustrated by stating that, in each decade since 1881, the three Provinces have lost a native-born population practically equal to that of Prince Edward Island.”

“Of the male population between 15 and 65 who were living in the Maritimes in 1891, over one-third of the survivors were living elsewhere in 1921. There were in 1921 at least 325,000 former residents of the Maritimes who were living elsewhere—about three-quarters in the United States. This emigration of the native-born was not entirely due to the impossibility of making a living in the Maritime Provinces, for from 1901 the immigrant population was increasing. The latter increase occurred chiefly before the war, but has also been in evidence on a small scale since. The effects of this emigration upon the Maritime Provinces may be briefly summarized as follows:—

“The emigrants are mostly drawn from desirable classes of the population, the majority being young native-born of British races. Most of the emigrants leave the Maritimes between the ages of 15 and 30, after having been educated at the expense of the Provinces, and when they are young, vigorous, ambitious and enterprising. By their departure the Maritime Provinces lose not only the most efficient type of labour power but also enterprising ability on which further development depends.”

INCOME TAXES

At Confederation the Provinces transferred to the Dominion the right to impose customs and excise taxes and these have constituted the most important features of Dominion governmental revenues. It was not then expected that the provinces would be compelled to resort to direct taxation but that power is distinctly conferred upon them.

New Brunswick, as a Province, has not imposed income taxation although municipalities in the Province have always accepted that principle for purposes of local revenue.

It was regarded by the Dominion before the war that this power of direct taxation was to provide exclusively for provincial needs and there was no encroachment upon that particular field. The Dominion invaded this area of taxation as a war measure.

Sir Thomas White, Minister of Finance, in the House of Commons is reported to have said (Debates 1917. Vol. 4, page 3761):—

“The Dominion Government, under the provisions of the British North America Act, is empowered to raise revenue by any mode or form of taxation, whether direct or indirect. On the contrary, the Provinces, and by consequence the municipalities which derive their taxation powers from the Provinces, are confined, in the raising of their revenues, to measures of direct taxation. As I have stated, the provinces and the municipalities are confined to direct taxation, and I have not regarded it as expedient, **except in cases of manifest public necessity**, such as I believe exists at the present time, that the Dominion should invade the field to which the Provinces are solely confined for the raising of their revenues.”

The representatives of the provinces attending the Dominion-Provincial Conference in 1918 adopted the following resolution:—

“The provincial representatives recognize that at such a time as the present it would not be wise to press the Dominion Government for immediate action on the several claims and expectations herein referred to. Without waiving

any rights they have for the consideration of such matters at a more opportune moment, the provincial representatives respectfully suggest that since the income tax has been adopted by the Dominion Government as a war measure, it would be reasonable, in view of all the circumstances, that the Dominion should not leave to the provinces the duty of imposing new taxes of a similar character, but that the Dominion tax be treated as one for both Dominion and Provincial purposes, and that a proportion of the proceeds of the tax, say 50%, should be assigned by the Dominion to the provinces on a per capita basis to assist the provinces in meeting the pressing obligations of the time."

It seemed to be recognized at the time by the provinces that the exigencies of the situation might have justified the Dominion in imposing an income tax for a temporary war purpose, but the "manifest public necessity" must have long ago disappeared.

It has been said that the provinces are persistent in making claims against the Dominion and it has been intimated that there has been no foundation for these constant applications to Ottawa. But the question might be asked as to how the Dominion Government can disclaim responsibility in this respect, when it arbitrarily entered upon the field of taxation which was always regarded as the particular resource of the provinces?

The provinces suffered from the war in relation to their economic life in the same way as the Dominion. It will be found upon the examination of Dominion projects from the time of Confederation that, through the construction of unnecessary railways and by reason of the extravagant expenditures on the canals and on the St. Lawrence with an attempt to create artificial ocean ports and the expenditures for the improvement of port facilities in the United States, the Dominion Government placed this Union in such an unfortunate financial position that it was unable to meet the situation which arose by reason of the war. Thus it may be admitted that at the time of the encroachment in respect to direct taxation there was necessity for some radical improvements in the revenues of the Dominion. But it is a mistake to say that the provinces are responsible for that condition.

As above suggested the exigency which arose at the time of the war is not present today and has not been present for

many years and the Dominion should long ago have abandoned the field of income taxation.

It is hoped that the Commission will be able to make a recommendation that some reasonable adjustment of these income tax collections may be made between the Dominion and the Province.

THE SALES TAX

In 1920, by the imposition of a sales tax, the Dominion invaded a field of taxation which should have been regarded as belonging to the province. We repeat what has been said in reference to the income tax and there is this further observation to be made.

The Dominion Government collected in 1936 by reason of this sales tax \$77,551,974. The amount was collected from the producer, or manufacturer, or importer of the goods. The custom of the trade is that such producer, manufacturer or importer, as the case may be, adds 10% to the price of the goods and that the retailer adds the usual profit of 33 1-3% on the sale of the goods to the consumer. It will thus appear that the collection of seventy-seven odd million dollars costs the consumer in Canada practically 50% more than the yield to the Government. If the goods pass through the hands of the wholesalers or others before reaching the retailer an additional percentage is added to their price by the intermediate person. Our complaint is not that these merchants are acting improperly in adding as above to the price of the goods. They have to pay out the money to the Dominion when they sell the goods in the first instance and it is only reasonable that they should have a return on this money as the goods cost them just that much more. But we wish to point out the extremely expensive method of collecting taxes. It all falls upon the ultimate consumer.

If the Province was left in possession of this particular field of taxation, as it should be, only the real amount of the tax would be assessed against the consumer. The expense of administration would be practically the same in both cases.

The Dominion, notwithstanding that it has appropriated this certain field of taxation as well as the field in relation to the

income tax asserts that the Province must exhaust all sources of revenue before asking assistance of the Dominion. The Dominion loses sight of the fact that these sources of revenue are no longer available to the provinces.

If this condition is permitted to continue it is only reasonable that some concession should be made to the provinces to make up to them the loss in revenue which they have sustained and are sustaining in reference to this matter.

SUCCESSION DUTY

The wealth of Ontario and Quebec has been gathered together, principally because of the centralization of industry in those provinces, from all corners of the Dominion. Their position is not unlike that of a large mercantile corporation with a head office located, for example, in Toronto. The branches extend to every province. The people all over Canada deal in the goods of the corporation. The profit is made from the consumer of the goods, but this profit finds its way to the central office. The gains of the business are distributed to those owners. This tends to create large estates in the place where the owners reside and these estates are subject to the payment of succession duties in such place.

Succession duty must be regarded as a tax upon the people who contribute to the building up of the estate and it seems only fair that the province in which the contributing parties reside should participate in respect of the succession duty collections.

The head offices of banks, insurance companies and other financial institutions, as well as those companies which deal in the sales of merchandise, are located for the most part in Toronto and Montreal.

The result is that succession duties collected in the Provinces of Ontario and Quebec are in much larger amounts; relatively, than those obtained in the less wealthy provinces.

It seems that a Dominion administration of this particular field of taxation would be more satisfactory in some respects than administration by the province. The authorities at Ottawa, in having access to income tax returns, through the banks and

other sources of information, would be better able to determine the proper amount to be paid than would a provincial administration. The Dominion would also be able to provide that the estates pay only one tax instead of, as now, being subject to a succession of tax assessments.

At present every province where shares or securities of corporations are registered exacts a succession duty from the estate irrespective of the place where the deceased is domiciled at the time of his death. This duty is required to be paid before the shares or securities are transferred on the books of the company. In some cases the fees exacted by the several provinces where a deceased person happens to own shares or securities amount to a very large proportion of the whole estate and there is immediate necessity that there should be some relief in respect of this burdensome taxation.

If the collection of succession duty is made by the Dominion, it should only be upon a guarantee that the revenues be apportioned to the several provinces on a per capita basis or on some plan which would result in a fair adjustment based upon the foregoing considerations.

Our submission is that the duties be collected by the provinces unless some arrangement, based upon the considerations hereinbefore mentioned can be agreed upon as to the distribution of the amounts collected.

If the provinces are to continue the collection of succession duties an effort should be made to put a stop to the successive assessments through the transfer of shares and securities above referred to.

EDUCATION

The educational system in New Brunswick was established in 1871 under what was called the Free Schools Act.

The unit of school administration for elementary schools was the school district, except in urban communities where the unit was the town, city or municipality. There was a time in the history of the Province when the administration of education by the small rural school section or school district was suited to the needs of the community. The country was sparsely settled, educational needs were relatively simple, being usually confined to reading, writing and arithmetic. Roads were few and transportation facilities were limited to the horse and wagon. The school-house was generally located so that it would be reasonably within walking distance of all pupils of the district.

Many of these conditions have now changed materially and the above method of administering education is now inadequate, except in those parts of the Province where pioneer conditions still prevail. People in the rural districts have become more advanced. Roads are improving and motor busses provide quicker transportation.

Moreover educational requirements are no longer simple. Higher standards are required in the qualification of teachers. Detailed supervision is becoming more and more necessary. Provision for individual differences of ability in pupils is being demanded. Adequate equipment and instruction in physical training, home economics, vocational education and proper medical, dental and library services are necessary parts of an educational system. All these services and many others are quite impossible or hopelessly inefficient in the small one-teacher school districts.

Under present conditions rural schools have less efficient teachers but are costly and uneconomical as the class is necessarily small. If a thorough program including transportation were arranged in districts where transportation is practicable, scores of one-room schools would be closed and a much more valuable education provided in consolidated rural schools.

The present system results in extreme and unfair inequalities of opportunity. There are school districts in New Brunswick having an assessment valuation of less than \$5,000 per teacher.

The cost of the schools in rural communities, and these, of course, would be the great majority of the schools in New Brunswick, is borne by the Province, the municipality and the local school district.

During late years it has been found that many of these small districts have been unable to provide for their share of the expense and many schools have been closed.

Owing to the difficulty which has been experienced in finding a market for what the farmer produces, it has been impossible for the man on the land to pay taxes in respect of all the services to which he must now contribute. Through excessive freight rates he is not able to reach the markets of Canada in competition with farmers close to those markets. Through the customs tariff in the United States he is debarred from the immense natural market of the Maritime Provinces.

When the Free Schools Act was passed in 1871, all units and departments of the educational system were placed under the control of the Board of Education which was composed of the Lieutenant-Governor, the Members of the Executive Council, the President of the University of New Brunswick, and the Chief Superintendent of Education.

Then the courses prescribed were purely academic. Since that time three separate and distinct units have been added. Physical Training was added to the subjects required for teachers' license and prescribed as part of the daily requirements in all the public schools of the Province in the year 1911.

This branch of education was placed under the local committee of the Strathcona Trust for the Province of New Brunswick by an agreement entered into between the education authorities of New Brunswick and the Militia Department of Canada, February 21, 1910. It was further agreed that the Militia Department would provide instructors to train the teachers until such time as the Department of Education was prepared to undertake the work.

In order to arouse in the children of the rural schools an appreciation of their environment and a greater and more intelligent interest in agricultural matters a Department of Elementary Agricultural Education was organized in 1913. A nature study course was prescribed for grades one to eight and a director was appointed who was responsible to the Minister of Agriculture.

With the introduction of vocational education and the passing of the Vocational Act in 1918, an additional department was established under a Vocational Education Board with a provincial director of Vocational Education under the direction of and responsible to this Board. In localities where vocational education was introduced, it was under the control not of the local School Board but of a local Vocational Committee with a local director.

As new departments were introduced control became more and more decentralized with the result that our educational system now consists of four units, separate and distinct under four different bodies directed by four executive heads independent of one another: academic; under the Chief Superintendent of Education; Vocational, under the Director of Vocational Education; Agricultural, under the Director of Elementary Agricultural Education and Physical Training under the direction of the District Cadet Officer.

In 1936 a Department of Education, headed by a Minister of the Crown, was established in New Brunswick. Under that department steps are being taken toward a new program of educational reform, by which the educational system of this Province may be on a par with that which obtains in other provinces.

In order that this design may be carried out it is our submission that it will be necessary to obtain further moneys which may be devoted to that end.

The following is an estimate of the additional annual expenditures required to give to New Brunswick a service corresponding to that of the Province of Ontario.

- (1) For the purpose of establishing minimum standards in general education, including the training of teachers, there would be required annually, in addition to the amounts which the Province has now devoted to that purpose the sum of \$375,000
- (2) For the purpose of a system of rural high schools 75,000
- (3) For the maintenance, including transportation of pupils, the teaching of agriculture, home economics, fishing, commerce, mechanics and other necessary academic subjects the sum of 125,000

(4) and for library service and visual aids service like that of Ontario	25,000
	<hr/> \$600,000

This Province, considering the value of education to the people, has endeavored to maintain a system as efficiently as possible. It has devoted funds which should have been applied to other purposes of administration and it is felt that the Dominion should make grants-in-aid to the Province covering, at least in part, provision for the above mentioned services.

The Dominion Parliament has recognized the need of the Province by making temporary grants for the purpose of agricultural and technical education. These grants should have been continued and extended to other matters. The effect of temporary grants was to encourage the establishment of facilities and upon the withdrawal of the grants the Province was placed in a position where it had to abandon the particular services for which these grants were intended or to continue the same with the limited resources available for the purpose. The Province has endeavored, at the sacrifice of other needs, to keep up, so far as possible, these necessary public services.

That New Brunswick is not in a position, as compared with the people of other provinces, to carry on in this connection is shown by the following tables.

**The Assessed Valuation per Classroom in the Canadian
Provinces, 1934.**

(Canada Year Book 1937, P. 857)

British Columbia	170,551
Ontario	169,196
Saskatchewan	161,321
Manitoba	118,824
Quebec	111,704
Alberta	99,296
NEW BRUNSWICK	67,124
Prince Edward Island	61,941
Nova Scotia	52,278

The Expenditure per Pupil in Average Daily Attendance, 1934.

(Annual Report Supt. Education, 1935, P. XIII)

Ontario	\$83.33
British Columbia	82.79
Alberta	82.47
Manitoba	62.75
Quebec	54.17
Saskatchewan	54.10
Nova Scotia	45.15
NEW BRUNSWICK	41.08
Prince Edward Island	38.15

The Average Annual Salary of Teachers in Rural Schools

(Dom. Bureau Statistics 1936 or latest year recorded)

British Columbia	\$949
Ontario (Public)	744
Ontario (Separate)	741
Alberta	723
Manitoba	601
Nova Scotia	536
NEW BRUNSWICK	509
Prince Edward Island	481
Saskatchewan	465
Quebec (Lay Protestant)	405
Quebec (Lay Catholic)	212

The Percentage of Provincial Government Expenditure on

Education to Total Expenditure on Education by

Provinces (1934)

(Annual Report, N. S. Supt. Education, 1935, P. XIII)

Prince Edward Island	65.8%
British Columbia	29.9
Nova Scotia	25.8
Quebec	22.4
Saskatchewan	20.5
NEW BRUNSWICK	17.3
Manitoba	15.9
Alberta	14.9
Ontario	12.0

**The Percentage of Provincial Government Expenditure on
Education to Total Provincial Expenditure for All
Purposes (1934)**

(Annual Report, N. S. Supt. Education, 1935, P. XIII)

Prince Edward Island	24.7%
Quebec	12.8
Saskatchewan	12.5
Nova Scotia	12.4
Ontario	11.9
British Columbia	11.2
Alberta	9.6
NEW BRUNSWICK	9.2
Manitoba	8.7

That this Province, notwithstanding its efforts, has failed to create and maintain a proper standing in education is indicated by the following:—

- (a) Illiteracy is the highest in Canada. Over fifteen years of age there are 20,626 people or 7.14% of the population who cannot read or write.
- (b) There are no rural high schools.
- (c) Small secondary school enrolment.
- (d) Poorly paid teachers.

New Brunswick is over-taxed. The average school tax on a district is 28.9 mills and the range is .5 mills to 116 mills. Our per capita wealth is \$1,739 as compared with \$3,414 in British Columbia.

The question of education is of national importance. Equality of educational opportunity should obtain throughout the nation. National progress depends upon a country's human resources. These are the greatest assets of any nation and should be fully developed.

The burden of education should be distributed as evenly as possible throughout the nation, otherwise equality of opportunity

will not be established or a complete development of human resources obtained.

Classrooms supported by a property valuation of \$67,124 as in New Brunswick cannot develop human talents and release the powers of the people as effectively as those backed by \$170,551 as in the Province of British Columbia.

Most civilized nations have sought to equalize educational opportunity and educational burdens by grants from national treasuries. Precedents from federal grants in Canada have been established:—

- (1) Agricultural Instructor's Act of 1912.
- (2) The Technical Education Act of 1919.
- (3) The Youth Training Act, 1937 and
- (4) Grants for technical education in 1931.

(The last mentioned Act was not brought into force).

In Great Britain where more than 50% of the cost of education is born by the national government, the control is left in the hands of the local authorities.

The nation leaves to those authorities the power of framing systems of education suited to local needs.

In South Africa the Union Government is responsible for 75% of the provincial expenditures for education. The Union pays grants to the provinces based on attendance as follows:—

Orange Free State £16 7 s 6 d.

Cape Province and Transvaal £6 7 s 6 d, for the first 30,000 and £14 for the remainder.

In addition there are grants for each student for continuation schools, training schools and a special grant for the education of natives.

In New Zealand the Dominion is divided into nine districts, each with a Board of Education which controls all elementary

and high schools and most of the technical schools. The cost of education is borne by the national government except for negligible amounts provided locally.

In the United States education is a State prerogative as it is in the Dominion. Yet large grants have been made for agricultural and engineering education by the Act of 1878. Vocational education is permanently and heavily subsidized from the federal treasury under the Act of 1917 and these grants were doubled under the Smith-Dean Act of 1936. The tendency in the United States is not to withdraw federal aid to education but rather to increase such aid although the funds are all administered by the State.

It was noted by the public press recently that there is a strong agitation in the United States for even more assistance in respect to education to be given from the federal treasury.

Ottawa's spasmodic aid to education, as indicated above, has not been of the assistance which it would have provided if the aid had been permanent and without a time limit. It was a great discouragement to the people of New Brunswick when these grants were withdrawn.

Our submission is that there should be grants-in-aid from the Dominion and that such grants be applied as directly as possible to the particular services in connection with education and that the sum of these grants should be such as to make it reasonably possible for the Province to educate its people as effectively as the people of other provinces are educated.

PUBLIC HEALTH

By the Act of British North America public health is not one of those subjects in respect of which the Legislature of the Province may exclusively make laws under section 92. The only provisions applicable are in items 7 and 16.

Item 7 is:

"The establishment, maintenance and management of hospitals, asylums, charites and eleemosynary institutions in and for the Province, other than marine hospitals".

And item 16:

“Generally all matters of a merely local or private nature in the Province”.

Public health is not mentioned in section 91.

Our submission is that there are many branches of the public health services apart from the question of hospitals, asylums, charities and eleemosynary institutions, which cannot be considered as matters of a merely local or private nature in the Province and that in respect of these services the burden falls upon the Dominion under its residuary powers.

The care and treatment of tuberculosis, of cancer, of leprosy, of venereal diseases, of other contagious and infectious diseases, of mental hygiene, of the feeble minded and of the insane, and other similar matters are far reaching in their effects and have become of interest to the nation.

The man power of the country in time of war and for the economic advancement generally in time of peace is one of the most vital considerations in respect of the general strength and welfare of the nation, and this man power is dependent upon the health of the people. The Dominion recognized its responsibility in this respect as early as 1879 when it assumed the care and treatment of leprosy and took over the lazaretto at Tracadie in New Brunswick.

The Act provided that the Governor-in-Council might by proclamation, establish as a lazaretto for lepers, any existing institution devoted to the care and treatment of persons afflicted with leprosy or any institution hereafter constructed or acquired for that purpose. Provision was made for the appointment of medical superintendents, and the Dominion has since that time and is now bearing the expense of the treatment of leprosy in New Brunswick.

The Government of the Dominion has also regarded its responsibility by expending large sums in an attempt to eradicate tuberculosis in dairy cattle. This provision has been attended with excellent results. The Province of New Brunswick is now considered to be free of such tuberculosis.

But the Dominion, although solicitous as to the health of cattle had seemingly less regard for the health of the people.

It became necessary for the Province of New Brunswick to intervene and assume the expense attendant upon the care and treatment of tuberculosis in individuals and in the care and treatment of the other matters hereinbefore particularly mentioned as falling within the jurisdiction of the Dominion.

In or about the year 1918 a Department of Public Health was established in this Province and since that time, the Province has assisted the Dominion in these matters. The Province and the municipalities together have expended large sums of money amounting to not less than an average of \$200,000 each year in caring for those particular services which apart from hospitalization properly are within the jurisdiction of the Dominion.

Our submission is that such services can be more effectively carried on by the local administration of the Province but that the Province should have some fair adjustment made by the Dominion as compensation in respect of such expense so incurred

The Dominion Parliament enacted a Public Health Act in 1899 (chapter 30). There was provision made in respect of the care and treatment of persons suffering from contagious or infectious diseases. Since that time the Dominion has had some regard to the questions involved but the Province and the municipalities have continued to bear substantially the whole burden of these services.

The last mentioned Act of 1899 may be regarded as an acknowledgment by the Dominion of its responsibility in this connection. The Dominion as far back as 1886 (Chapter 107) recognized its responsibility by enactment of the Adulteration Act, and in 1902 (chapter 20) an Act was passed by the Parliament of Canada entitled "The Canada Medical Act" which contained provisions respecting the treatment of contagious and infectious diseases.

The municipalities in the Province are no longer able to provide the proportion of this expense which has been imposed upon them by the Province and the burden has fallen more and more upon the provincial exchequer. In fact, a number of municipalities have been for some years delinquent in payments in respect of these services, and there is urgent need that the Dominion provide substantial assistance if the Province is to continue its present activities in this regard.

As will appear later in this submission, a considerable expansion in the present set up is required in order that an adequate provision may be made for dealing with these matters.

Moneys which have been devoted by the Province, in assisting the Dominion to carry on work under its jurisdiction have been provided from funds which were urgently required for other purposes of provincial administration.

The Province has been compelled to face the situation in order that some provision be made for this most serious problem but it has not been able to provide for the services adequately by reason of limited resources.

New Brunswick is quite willing to participate in this expense but does not feel competent to carry on the work unaided.

Tuberculosis and venereal diseases take the largest toll in every province. Both require prolonged and relatively costly treatment. For the past two years our tuberculosis death rate has shown a very appreciable increase (from 67 to 82 for each 100,000 in population). There is an average of approximately 350 deaths each year from this disease in the Province. If we were able to supply effective control measures it is estimated that we could reduce our tuberculosis death rate by 75% within the period of from fifteen to twenty years. If we are to deal with this terrible disease we must consider it as one which can no longer be handled as a parish or county matter. It must be dealt with as any other national problem. In order to accomplish this purpose there must be provided from some source additional funds appropriated without consideration as to the financial ability of the patient, the parish or the municipality.

In respect to venereal diseases the Province has established eleven free clinics for diagnosis and treatment. There is urgent need for an extension of these services particularly in the outlying sections. There was assistance given by the Dominion until 1931 by grants-in-aid. This was discontinued. We have been handicapped in this respect but have been carrying the service along so far as we are financially able to do so.

The provision for cancer control should be extended. There is, at present, a program inaugurated by the Dominion, largely

of an educational nature, which needs to be supplemented by more adequate facilities for earlier diagnosis and treatment.

In respect of mental hygiene there should be an expansion of field work with ultimate provision for the care of the feeble minded.

There is also an urgent necessity for an extension of the services of public health, nursing and child welfare throughout the rural districts. The service is badly handicapped because of the lack of trained public health nursing assistance. This is most essential, both for child and maternal hygiene, for the treatment and cure of tuberculosis and the control of venereal diseases and for the more effective medical inspection of schools and mental hygiene.

The Department of Pensions and National Health at Ottawa has been co-operating with the Health Department of New Brunswick generally in regard to certain public health matters and there is no overlapping in the several administrations. There is no complaint as to the working out of the present system except that, as above stated, there should be Dominion assistance to the Province.

The municipalities are no longer in a position to contribute in any appreciable amount toward the expense of public health services and the burden in future will fall practically altogether upon the Province or the Dominion. The care and treatment of tuberculosis and the other contagious diseases, of mental hygiene and many other matters not dealt with by hospitals, are such as cannot be adequately provided by local authorities. The question is too broad and it is one which should not be left to local administration even if such administration were financially able to carry the burden. Larger and more comprehensive measures are required than could be furnished by the municipalities.

If New Brunswick is to develop the above mentioned health services, after providing for its hospitals, asylums, charities and eleemosynary institutions, up to a standard comparable with that which obtains in other provinces, it is estimated that the sum of \$300,000 annually in addition to moneys already provided by the Province would be required.

We are therefore hopeful that this Commission may recommend that there be an adjustment between the Dominion and

the Province with respect to the moneys which the Province and municipalities have already expended for health services which should properly have been carried on by the Dominion, and that it may be found possible to recommend some plan which will satisfactorily provide for future operations.

HIGHWAY CONSTRUCTION

It is universally admitted that in view of the requirements of trade and the encouragement of tourist traffic permanent highways have become a matter of national importance.

In the early days of Confederation there was no thought of the development that has taken place in this regard.

But as early as 1919 the necessity of providing suitable highways throughout the Dominion was recognized by Parliament and a grant of \$20,000,000 was made to assist the provinces in the construction of highways. Each province was to be allotted annually a flat sum of \$80,000, the remainder of the annual grant being apportioned according to population. The grant was limited to forty per cent of the cost of construction or to the improvement of the highways.

Regulations were formulated and the expenditure under the Act was to be an addition to the usual expenditure for highways in the several provinces. The provinces were to submit a five year program of construction together with a classification of roads according to their importance.

This project proved to be on the whole very successful for the reason that the Dominion was able to exercise control over the expenditures. Just as in the case of old age pensions, there was adequate supervision by the Dominion.

At the time this legislation was passed good motor highways in Canada were almost non-existent, and the standard of construction was not such as would be considered at the present time sufficient to meet the needs of tourist travel. A great many of the roads were of gravel construction. New Brunswick had easy gradients and good supplies of gravel and it was able to build a large road mileage. Ontario and Quebec built more hard

surface roads than did the other provinces. Ontario earned its whole federal grant of \$5,877,300 on 638 miles of road.

These grants were made for a limited period.

The Act resulted in the reorganization and extension of every provincial highway department. A vast program of construction was begun. Federal engineers were placed at strategic points and they held the provinces up to reasonable standards. The depression in 1921 checked the progress of this scheme and an extension of two years was granted. This time was further extended for an additional two years and the grants were then discontinued. Some lesser grants were made later, the particulars of which will be furnished at the hearing.

The reasons for the success of the measure are apparent. They are, first, that the aims to be attained were comparatively simple; and second, that the federal administrative staff was sufficient.

In this legislation the Dominion again recognized the principle of fiscal need. Something had arisen which was not foreseen at Confederation. It was considered by the Dominion that the provinces could not provide out of their limited sources of revenue for this service which was demanded by the people under modern conditions. Therefore the Dominion came to the assistance of the provinces in order that these demands could be met. It was the same principle as that adopted in connection with provision for old age pensions and it is the same principle that should be applied in connection with those other services for which the provinces are primarily responsible and which are demanded throughout the Dominion.

Why should the provinces now be compelled to continue this necessary public service out of their own resources? There is just as much reason at the present time, and probably more reason, that the provinces should be assisted in this respect. Every province has had to keep on with the extension of the service. Large increases in public debts on account of the construction of permanent highways have had to be made. As above stated a modern class of highway construction is of national importance. If any province reverted to the conditions which obtained before hard surfaced roads were deemed necessary, it

would react in a detrimental way throughout the whole of the Dominion because of the necessities of tourist travel.

The construction of high class roads is of importance to the nation, not only in reference to trade and commerce but especially in case it becomes necessary to defend the country in time of war. The implements of war are now largely mechanized and it is absolutely essential that, in considering matters of defence, account must be taken of our means of transportation of war material and personnel.

The interest on that part of the public debt attributable to the construction of permanent highways has had to be borne by the provinces and this charge contributed toward the creation of the fiscal need.

In view of the fact that the Province of New Brunswick has provided highways of such a nature as to be necessary in time of peace and for the protection of the nation in time of war and has incurred a relatively large amount of public indebtedness in their construction, it seems only fair that the Dominion should assume part of this burden.

We trust that the Commission may be able to recommend to the Government of Canada that some concession be made to the Province in respect of highway construction.

THE EFFECT OF THE TARIFF

In reference to the tariff we accept the statements of Professor Carrothers (The Canadian Journal of Economics and Political Science, February, 1935) where on page 34 he says:—

“The effect of Canadian tariff policy since 1879 has been to create an economic situation in which various forces have been released to operate in concentrating the manufacturing industry of Canada in the provinces of Ontario and Quebec. It has had the further effect of making it necessary for the people in other provinces to buy largely from these manufacturers operating under a protective tariff. This means higher costs of production. At the same time, the other seven provinces being dependent to a large extent on

primary production, for which there is an extremely limited market in Canada, are compelled to sell in free competition in the markets of the world, while they themselves must purchase in a protected market."

"It may be pointed out that at the time the Confederation financial arrangements were made, there was no contemplation that the Canadian tariff would be used for other than revenue purposes. The use of the Canadian tariff for purposes of protection was inaugurated in 1879 with the so-called 'National Policy' and has been a vital factor in changing the financial picture as it existed prior to that time. Consequently, the situation now is that something in the nature of a subsidy is necessary to redress the balance as between the various provinces of Canada."

"Objections may be made to the principle of a subsidy. It has been stated that it is an easy way for the provinces to secure funds and overcome financial difficulties, without having to face their own electors. The danger of the provincial governments developing 'a most calf-like appetite for milking this one most magnificent Government cow' was seen even at the time of Confederation. However, a different light is thrown on this propensity as a result of the study which has been made by Professor Rogers, and probably the calf can be excused on the grounds of hunger."

"It is pointed out that increases in subsidy payments will not remove the tariff disabilities under which the seven provinces operate. Much will have been accomplished if this study leads to a complete re-examination of our whole tariff policy on a scientific basis. Professor Rogers states: 'It is our contention that the protective tariff from the time of its adoption has failed to meet the just requirements of a national policy in a federal state, that it has been haphazard in its growth, unequal in its incidence, and that it does not represent a fair compromise of the conflicting interests of the other provinces of the federation' (p. 119). The effect of the tariff has been to restrict external competition while internal competition has been left free. This has resulted in a lack of balance as between the various provinces of the Dominion. A truly national policy would take into consideration those industries which are dependent on export markets, as well as those dependent on the internal market. If

this were done, the cost of the Canadian tariff policy to the seven economically oppressed provinces would be reduced."

Professor Rogers is now the Dominion Minister of Labour.

We submit that the above expresses fairly what is a matter of common knowledge.

The suggestion has been made that the provinces have become parties to the policy of protection for the reason that some of the Members of the Dominion Parliament voted in favour of such policy. The provinces could not be bound in any way by the action of the Members of Parliament. The provinces, as provinces, are not, and never have been, represented in the House of Commons.

Confederation was a union of the provinces and it was designed to "conduce to the welfare of the provinces". Our Province continued to be a separate and distinct sovereignty. It was one of the units in the scheme of Confederation.

The provinces can only be bound by their own acts and not by the acts of the Members of the House of Commons who are chosen for considering matters of dominion jurisdiction and policy but not in any way as representatives of the provinces.

Even if the provinces had consented to the imposition of a protective tariff, it would have no bearing on the question under consideration. It would not affect any of the conditions detailed by Professor Rogers as above quoted.

The protective principle seems to be fairly well established in Canada.

But it is the effect of the policy with which this Commission has to deal.

If it be admitted that the result of this is as above stated, is it proposed to permit the outlying provinces to carry on with the handicap or to devise some method whereby their disadvantages may be partially overcome?

We realize that there is the greatest difficulty in determining the amount of the loss in New Brunswick which is occasioned each year by the operation of the tariff policy. In

Nova Scotia, before the Jones Commission in 1934 Professor Rogers stated that after a careful investigation of the economic position of the Province of Nova Scotia he calculated the net loss to that Province in this regard for the year 1931 at \$4,478,000. His method was to take the total enhancement of prices to consumers because of the tariff and to deduct the enhancement in prices of Nova Scotia products because of the tariff. He also deducted the tariff subsidy on Nova Scotia coal which in 1937 amounted to upwards of \$1,000,000. We are not able to make an estimate of the economic loss to New Brunswick through the operation of the tariff policy but we trust that the Commission, having regard to the statements of Professor Rogers and the economic situation in New Brunswick in reference to manufacturing as compared with that of Nova Scotia, will be able to make a recommendation which will be fair and equitable in the circumstances.

The disadvantages from which New Brunswick has suffered in relation to the tariff were further accentuated and increased by the unauthorized burden of excessive freight rates on the railways in the Maritime Provinces after 1912.

Principally as a result of these two elements industries became centralized in the Provinces of Ontario and Quebec. Large companies having their head offices in Ontario and Montreal bought up many industrial plants in New Brunswick and then closed them down. The manufacturing in New Brunswick at the present time is insignificant as compared with manufacturing in other parts of the Dominion.

In this connection it is well that the Commission should bear in mind that the Canadian banks have been centralized in Ontario and Quebec. Prior to Confederation and for some years afterwards we had our own banking institutions in this Province and our people were able to obtain money for the encouragement of industry here.

The head offices of these banking institutions were removed, after Confederation, to Montreal and Toronto where they were situated more immediately in touch with the financial interests by which they were controlled.

The result has been that industries in New Brunswick have not been able to obtain financial assistance in cases where

such assistance would enable our local industries to compete with those in the Provinces of Ontario and Quebec.

Pertinent cases may be cited where local industries in this province have been destroyed because of the difficulty of financing and we submit that finances have been withheld as local industries might come into competition with similar industries in the last mentioned provinces.

This is only another example which indicates that New Brunswick has suffered through the operation of the protective tariff and excessive freight rates.

Nova Scotia has some compensation inasmuch as the central Canadian market was brought within the reach of the coal mining industry and that the steel and car manufacturers have received a share of the orders for railway material and equipment from the Canadian railways.

The Jones Commission in its report, in reference to conditions in Nova Scotia (p. 49) states:—

“We believe that the industries of Nova Scotia, regarded as a whole, have suffered materially from the high tariff policy pursued by the Confederation during the past fifty years. The compensations offered by the Canadian market have not been sufficient to offset the loss of foreign markets. We believe that the policy has been a factor retarding the economic development of the Province and that if a low tariff policy had been pursued the economic development of the Province would have been more rapid and that the Province would have been able to maintain an increasing population on a higher standard of living than has actually been enjoyed during the last half century”.

Similar conditions exist in New Brunswick.

Having in view the probability of the protective tariff policy being continued, it is quite clear that some relief should be afforded to the Province of New Brunswick. If this were by further grants of money it would not have the effect of overcoming the disadvantages suffered by the people of this Province through the operation of the tariff. The broad consideration is that, as time goes on, the Province may lose the few industrial establishments it now possesses.

No definite finding was made by the Duncan or White Commissions as to the amount that should be granted to the Maritime Provinces in this connection.

The White Commission, although its language is somewhat indefinite, certainly could not have had in mind compensation for this outstanding situation. If it did intend the additional grant of \$300,000 to include compensation in respect of tariff as well as various other matters that were considered, we submit that such finding was so palpably inadequate that it should not be regarded by this Commission as in any respect final. This Commission is to enquire into the whole matter of the economic conditions in Canada and is not bound by any prior finding. Neither is this Province bound by any finding of this Commission.

The question of regional tariffs has been mooted and we think such tariffs might be adequate to meet the situation if they could be worked out in practice and we commend the idea for the consideration of the Commission.

We submit that the most practicable method of affording to this Province some compensatory advantages would be by means of a carefully considered adjustment of freight rates on shipments to and from the Province. This would enable our producers to have access to the markets of Ontario and Quebec on a less burdensome basis than now obtains and it would relieve our consumers in the Province to a large extent with respect to the high prices of commodities which they are compelled to use.

Parliament has made a reduction in railway freight rates amounting to many millions of dollars every year in the legislation relating to the Crow's Nest Pass as assistance to the Pacific Coast ports. The loss to the railways is directly assumed by the Dominion.

We wish to emphasize the fact that this Province is not insisting upon compensation in respect of this matter or any other matters which is referred to in this Brief to the fullest possible extent. Our desire is to point out to this Commission and through this Commission to the Government of Canada some of the matters which might very well be considered as justifying our claim that some further assistance be provided. We are not approaching the Commission in an arbitrary spirit or with an

antagonistic attitude. We feel it our duty to present the situation as we regard it.

DEBT ALLOWANCES

Under the Confederation agreement certain assets were transferred to the central government by the provinces. These were assets that would properly belong to or be of value to the new Dominion, comprising railways, public buildings, marine equipment and items of a similar nature.

In return, the Dominion paid for these assets by giving debt allowances to the provinces for the total value.

As it was difficult to place a proper valuation on those taken from Upper and Lower Canada, attempts were made to base a per capita payment plan on New Brunswick's transfer, but this was found to give too large a credit to the Upper Provinces. So the valuation was based on the ratio of Nova Scotia's debts to assets to population.

Unfortunately, it appears that this debt allowance became looked upon as merely another per capita grant under a different name, but there was no grant, subsidy nor charity about it.

The transaction was a business one. The Dominion bought properties from the provinces, paid for them, and received value for every dollar they so paid.

The railways in New Brunswick which afterwards became a part of the Intercolonial Railway system were operating most profitably when taken over by the Dominion. New Brunswick gave full value in respect of the debt allowance.

When negotiations were being conducted for the admission of Manitoba to the Dominion, the people of that province demanded more concessions than had satisfied the original four, and the British North America Act did not provide for such concessions. So, a fictitious situation was created, whereby a debt allowance was given Manitoba for a debt that had never been owed, for assets that did not exist and based upon a population that was not there.

Naturally, when other provinces were admitted they received the same preferred treatment.

This was one of the first causes of dissension. It was so obviously unfair.

We therefore submit that this Province is entitled to compensation from the Dominion Treasury for the loss it has sustained through preferred treatment given other provinces by debt allowances.

Debt allowances were a proper charge on the central Treasury when the Dominion was first created. But since that time the debts allowed for have become lost in the maze of the financial dealings of the Treasury, the original assets have disappeared and the dissatisfaction is all that remains.

We submit that the debt allowance has outlived its intent, that the title is a misnomer and a cause of ill-feeling and should be abandoned and the payments incorporated in the readjusted grants to the provinces.

PUBLIC LANDS

By the Rupert's Land Act, 1868, and an Imperial Order-in-Council, Rupert's Land, the Peninsula of Ungava and the North West Territories came under the jurisdiction of the Dominion of Canada, with certain reservations, and the Dominion Government paid the Hudson Bay Company £300,000 sterling for their interest in the annexed territory.

Since that time these lands have been partitioned according to the following table which shows the total area within the Dominion, the areas under Provincial Government and the extent of the public domain still remaining in all respects under the direct jurisdiction of the Federal Government.

	Acres
Total area	2,386,985,395
Total area of the four original Provinces— Ontario, Quebec, Nova Scotia and New Brunswick (1867)	300,461,105

Total area of British Columbia and Prince Edward Island (1871-1873)	229,145,191
Original area of Manitoba (1870)	47,188,298
Total area of Alberta (1905)	163,382,400
Total area of Saskatchewan (1905)	161,088,000
Manitoba Extension (1912)	114,091,702
Ontario Extension (1888)	22,000,000
Ontario Extension (1912)	93,696,000
Quebec Extension (1912) ..	227,375,000
Yukon	132,528,640
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Total organized territory	1,592,279,697
Remaining unorganized territory	794,705,698
<hr/>	
	2,386,985,395

The findings of the Duncan Commission with respect to this claim (page 18):—

“We do feel it right to say that it is a subject matter upon which—quite apart from any question as to whether an argument could reasonably be sustained on proprietary right—consideration should be given to the Maritime Provinces”.

To which the White Commission added (page 17):—

“We feel we can only deal with this claim as to public lands added to other provinces in enlargement of their original boundaries in a broad general way giving it equitable consideration as a factor of importance to be taken into account in reaching conclusions on the whole question of a just revision of subsidies as between the Maritime Provinces and the Dominion.”

It is admitted that the geographical position of New Brunswick prevents either an additional grant of territory or a portion of these lands being added to the Province.

We hope that the Commission, in consideration of the circumstances surrounding this question of public lands, may be able to recommend some action which may have the effect of settling this question definitely.

FREIGHT RATES

We set out elsewhere our contention in reference to the operation of the Intercolonial Railway under the agreement of Confederation.

In addition to what is therein stated, our submission is that the Maritime Freight Rates Act, when passed, afforded most inadequate provisions in respect of the excessive rates which were fixed by the railways in 1912 and subsequent years, and that alterations in the rate structure afterwards introduced as affecting the other parts of the Dominion have destroyed any benefit that the Maritime Provinces might have had from the reductions in freight rates under the Act.

The Commission of which Sir Andrew Duncan was chairman, made the following statements (page 21):—

“Rate Structure of Intercolonial Railway.”

“The Intercolonial Railway was completed in 1876, and it would appear from the evidence we have received that from then until 1912 the interests of the Maritime Provinces were fairly well safeguarded, the freight rate structure being such as to take into account the requirements of their traffic. The lower level of rates that prevailed on the Intercolonial Railway system prior to 1912 is, in our view, rightly to be interpreted as the fulfilment by successive governments of the policy and pledges that surrounded the railway from its inception, whatever impressions may have been created by the form of its administration. Since 1912, changes have taken place in the framework of the rate structure, and increases have been added to the freight rates. The combined effect of these has been to impose upon the merchandise and industry of the Maritimes, a burden which, it is alleged, is quite out of proportion to the increase which has been added since 1912 to the freight structure in other parts of Canada, although it may, in many cases, only have raised Intercolonial Railway rates to the same level of scale as rates in other places. The net result of these changes is broadly shown by the figures given in evidence by the railway administration who, at our request, furnished us with statistics to show the position now as compared with 1912 for the Intercolonial Railway and for the rest of Canada. These figures reveal that Intercolonial

rates have suffered an estimated cumulative increase of 92 per cent (i.e., their 100 has become 192). The estimated average increase of rates for the rest of Canada is 55 per cent (i.e., their 100 has become 155)."

"Effect of changes in Rate Structures on Maritimes."

"The Maritimes case on railway rates was put to us in very considerable detail. The Railway Commission is at the present time dealing with these same details, and we have not formed any opinion on these matters so far as a judgment on their merits would involve consideration of railway administration and policy. On the broader question, however, of the incidence of the existing rates as a whole upon industry and employment in the Maritimes, we have come very definitely to the conclusion that the rate structure as it has been altered since 1912 has placed upon the trade and commerce of the Maritime Provinces, (a) a burden which, as we have read the pronouncements and obligations undertaken at Confederation, it was never intended it should bear, and (b) a burden which is, in fact, responsible in very considerable measure for depressing abnormally in the Maritimes today business and enterprise which had originated and developed before 1912 on the basis and faith of the rate structure as it then stood."

The recommendations of the Duncan Commission, therefore, were that an immediate reduction of 20% (so that 192 would become approximately 155) be made on all rates charged on traffic which both originates and terminates at stations in the Atlantic Division and that the same reduction be also applied to the Atlantic Division proportion of the through rates on all traffic which originated at stations in the Atlantic Division (excluding import traffic by sea) and is destined to points outside the Atlantic Division.

The Duncan Commission, in recommending these specified reductions in freight rates, was only endeavoring to reinstate the relative position of the Maritime Provinces to the basis which existed prior to the year 1912. They state in their report (page 22):—

"We feel that the increase arising from the changes that have taken place in freight rates since 1912—over and above the general increase that has taken place in other

parts of the National System—is as fair a measure as can be made of these special considerations, and accordingly should be transferred from the Maritimes to the Dominion so that the original intention may be observed.”

We claim that an allowance should be made to this Province for the loss occasioned by reason of the increase of rates between 1912 and 1927 and the failure to provide for a reduction of rates generally.

In addition to the above there is also the loss to our industries through the unwarranted imposition of these excessive rates which prevented our manufacturers, our farmers and others from reaching the markets of Canada on a fair basis and imposed an excessive burden upon our people in the importation of commodities to the Maritime Provinces from other parts of the Dominion.

The recommendations of the Duncan Commission in respect of import rates, export rail rates and providing the Railway Commission with greater supervisory powers of investigating Maritime industries at the expense of the Commission and to authorize rates which would promote the development of such industries and also publication of statistics of interprovincial trade, have not been implemented.

The Maritime Freight Rates Act was passed as a partial palliative but by the change in freight rates, as hereinafter more particularly referred to, the benefits that might have accrued to the Maritimes in respect of interprovincial trade have been practically nullified.

If this policy of centralization continues to be applied to the operation of the Intercolonial Railway, the position of New Brunswick becomes desperate. It never was intended that the Intercolonial Railway should be so operated and the only manner in which a correction of this condition may be made, in order to give our industries a fair chance to survive, is by having a local management of the Canadian Government railways, including the Intercolonial, at Moncton, authorized and instructed to grant such rates as are necessary to encourage and promote our industries and fairly regulate trade between the provinces as originally planned.

The preamble to the Freight Rates Act, quoted later in

this submission, is a parliamentary declaration that the rates charged for freight after 1912 were excessive and unwarranted.

In the face of this parliamentary pronouncement and insofar as it related to interprovincial freight traffic it would seem to be a matter of calculation to determine the loss sustained by New Brunswick.

For the fifteen years between 1912 and 1927 the Maritime Provinces struggled under a railway freight rate overcharge which almost destroyed their commerce, their industry and every economic activity and the only effect made by the 20% reduction under the Maritime Freight Rates Act was to stop the overcharge temporarily. No compensation was provided to the Maritime Provinces in respect of the overpayments exacted during the fifteen years prior to 1927.

As a result of rate changes which have taken place during the last ten years the rate relationships established by the Maritime Freight Rates Act have been nullified in a number of cases by competitive or compelled rate reductions effected by the railways outside of the Maritime Provinces. The Maritime Freight Rates Act when passed served to rectify, in part, conditions and circumstances that existed in 1927 and also to re-establish the purpose and intent of the construction of the Intercolonial Railway. In other words, "to afford to Maritime merchants, traders and manufacturers a market of several millions of people instead of their being restricted to the small and scattered populations of the Maritimes themselves, particularly in the light of the disturbance with which their trade was threatened as the result of the discontinuance by the United States of the reciprocal arrangements that had prevailed." (Report of Duncan Commission, p. 21).

After the Maritime Freight Rates Act came into effect in 1927 certain so-called competitive rates were established in Ontario and Quebec which were alleged to be necessary to meet the conditions of water and truck transportation, but the railways have refused to permit the shippers and others in the Maritime Provinces to participate in the reduced rates.

As an example, if one of these reduced rates is made with respect to traffic between Montreal and Toronto, the shipper in the Maritime Provinces on goods shipped to Toronto is obliged to pay the regular rate which existed prior to the adoption of the so-called competitive rates and thus the purpose and effect

of the Maritime Freight Rates Act in respect to the greater part of the traffic has been nullified.

We understand that a brief is to be presented by the Maritime Transportation Commission of the Maritime Board of Trade dealing in detail with certain of the matters above referred to. As we are not at present informed of the submission to be made by the Transportation Commission we are not to be bound thereby insofar as it may conflict with the particular representations we make affecting this Province.

We trust that this Commission may have regard to the fact that a great deal of money was paid by shippers and others in the Province between the years of 1912 and 1927 which, according to the finding of the Duncan Commission, should not have been exacted.

The amount paid by the Dominion to the railways in consideration of this rate reduction covering the ten year period after 1927 can be ascertained at Ottawa. From that it may be quite possible to make a fairly close estimate of the overpayment for the fifteen years prior to 1927.

We therefore submit that a reasonable allowance be made to the Province in this connection or that there be some concession by which the people can be compensated. Also that the Commission recommend a local management of the Government railways at Moncton and that such management be authorized and instructed to correct the present unjust freight rating provisions and, from time to time, to arrange freight rates in order to meet changing conditions.

THE COAL MINING INDUSTRY

As has already been pointed out, the effect of the protective tariff policy and of the freight rate structure has been distinctly detrimental to the interests of the Province of New Brunswick. The protective tariff was designed to encourage the manufacture of raw material in Canada.

The policy of the Dominion in respect of the encouragement of coal production has not had the effect of assisting industry in this Province but has had quite the opposite effect and

the question is one which, in our view, might be considered by this Commission.

The coal fields of New Brunswick are located in the central part of the Province. The number of men usually employed is approximately twelve hundred. The amount of capital invested is about \$1,400,000 and the annual production 350,000 net tons.

The amount expended by the operators for wages and supplies is roughly \$1,000,000 annually.

For some years prior to 1934 the mining was carried on at a very small operating profit. There was no interest available on capital invested. From 1934 up to the present time the mines have been operated at an ever increasing loss.

The Dominion Parliament, recognizing that there must be some assistance provided to the coal industry of Canada, arranged by legislation for certain subventions to be made to coal mines both in the east and in the west for the purpose of encouraging the consumption of Canadian coal in order that the operators might successfully compete in the Provinces of Ontario and Quebec with the producers of coal in the United States and in other countries.

This assistance was in the form of freight rate reductions and the Government of Canada assumed the loss to be incurred by the railways by reason of the reduced freight rates.

The effect of this legislative provision was that mining of coal in the Province of Nova Scotia was most substantially encouraged. In the year 1937 that Province produced some 2,000,000 additional tons, or fifty per cent more than had been mined in previous years. The cost to the Dominion in 1937 in respect of this subvention to Nova Scotia coal was approximately one and three quarters millions of dollars.

Coal mining in Nova Scotia is one of the principal industries. Approximately twelve thousand men are employed. The Dominion Coal Company is by far the largest operator. It is one of the few companies which is able to transport coal by water to Montreal. The legislation provided assistance to the movement of coal by water to Montreal and then shipped by rail to points in the Provinces of Quebec and Ontario. Through this special

arrangement the Nova Scotia industry has been able to turn an annual loss into a most substantial annual profit.

By virtue of its increased production, the Dominion Coal Company and other mining companies in that Province have been able, through the reduction in overhead and by reason of discriminatory freight rates, to market a substantial part of their coal in our own Province of New Brunswick.

Owing to the fact that the mines in this Province are situated inland and that the shippers have to bear an unreasonable freight rate as compared with that afforded to the Province of Nova Scotia, it has been impossible for New Brunswick to take advantage of the above mentioned arrangement made to encourage the shipment of coal. This Province has not participated in the assistance which was designed to be afforded.

Whatever coal has been shipped from this Province is taken from open pit stripping operations at costs sufficiently below regular mining costs to admit a price as being quoted at points in Quebec which, together with freight assistance, enabled the small operators in respect of these stripping operations to market some of such coal in that Province. These stripping operations are of a more or less temporary character. The shaft mining operations are the principal part of the coal industry in New Brunswick, there being ninety five per cent of the men employed in such last mentioned operations.

Our submission is that the subvention which was designed to afford assistance to the coal industry in Canada has not had the intended effect in this Province and that some provision should be made to meet the difficulties under which the mining industry here is operated.

As above stated the subvention referred to, while not giving any assistance to our local industry, has had the effect of distinctly injuring such industry.

Operations have been placed at a disadvantage in connection with the supply of coal to large consumers within the Province, through the operation of low per ton mile freight rates from Nova Scotia to such consumers in this Province thereby interfering very radically with the natural geographical advantage which New Brunswick would have.

The result is that the operators in Nova Scotia have captured the market to a considerable extent, which should be reserved for this Province.

With their larger operations and advantages they obtain most discriminatory freight rates. They are enabled to undersell New Brunswick coal at many points within this Province.

It appears from a statement made by the Dominion Coal Company that there has been a market during the past year for 500,000 tons of Nova Scotia coal in addition to what that Province was able to produce.

Under the above mentioned subvention the Nova Scotia output has been increased two million tons in the last five years, while the increase in New Brunswick production that could be attributed to the subvention is practically negligible.

The freight rates on Nova Scotia coal to points in New Brunswick are lower, relatively, than the rates fixed upon shipments from our coal fields to the same points. This differential and figures in respect thereof will be submitted at the hearing.

The operation of the Canadian National Railways in respect of the purchase of coal for consumption in New Brunswick has also been discriminatory against this Province. That railway company is now buying only fifty per cent of their New Brunswick requirements from New Brunswick coal operators.

Our submission is that it should be arranged that this coal be purchased in New Brunswick provided, of course, that a fair price be fixed from time to time as conditions warrant. It is felt that there would be no difficulty in respect to the price but the same would be determined either by agreement or by some authority authorized to fix the price. If there were any discrepancy in respect to the price of coal the amount of the same should be provided out of the Dominion treasury.

The Canadian Pacific Railway Company is now purchasing annually about fifty per cent of the amount of coal used by it in New Brunswick from the operators in this Province. A similar arrangement could very easily be provided in respect to that railway.

Conditions being as they are, the industry as a whole has not prospered during the last six years; and it is only a question

of time, unless conditions change, when some of the operations must close down because their owners do not feel justified in putting up any more money if there is no future program that will lead to a more prosperous condition for the industry as a whole. We believe that your Commission could make recommendations that, if put into effect, would place the industry on a stable basis whereby wages could be increased and conditions be made better for all those employed in the industry. If something is not done along this line, the industry may be able to struggle along but will not be in a position to do anything of a permanent nature to improve the conditions of those engaged in it.

The Province of New Brunswick has been so debarred from participation in almost every form of assistance which has been given by the Dominion to the Provinces, it would seem in a case where it is possible to encourage a local industry in the production of raw material that an effort should be made to place such industry on a par with similar industries in other provinces.

THE FISH CANNING INDUSTRY

Connors Bros., Limited, has been engaged for some years in the canning of fish. The product is mostly sardines. This business, without any encouragement from the Dominion Government by way of protection, has been able to carry on and extend its products to many countries.

The profits, however, have been very narrow and under present day conditions, due to the depreciation of currency in European countries, the operation has been severely handicapped.

There are over six hundred employees engaged in the canning of fish and about one thousand in fishing to supply the factories.

The value of the investment today in physical assets alone is upwards of \$2,000,000.

In view of the fact that the Province of New Brunswick has received practically no benefit from the protective tariff, it is now submitted by us that an industry of this kind should be encouraged through some form of protection.

We have to suggest that the Commission recommend that the encouragement of this industry which is so important to the Province of New Brunswick might be afforded by relieving it of the provisions of the Customs Act with reference to the dumping duty clause in respect of the importation of tin plate.

The company manufactures the cans in which the product is placed. They are made of tin plate and this tin plate has to be imported although at present there is a small factory operating at Sarnia in the Province of Ontario.

In 1937 a quantity of tin plate was purchased by the company in the United States and the invoice value at Eastport in the State of Maine was \$5,070.04. The value for duty was fixed by the customs authorities at \$5,553. Twenty per cent duty was charged amounting to \$1,110.60. There was also added three per cent excise tax, \$199.91.

In addition to the above the customs authorities exacted the sum of \$1,066.10 as a dumping duty making a total payment required of \$2,376.61 on goods which cost in the United States \$5,070.04, or nearly fifty per cent duty.

The cost of the can is a very substantial part of the total cost of production and if the importation of tin plate for the purpose of manufacturing fish products were excepted from the operation of this tariff it would be of the greatest assistance to the manufacture of fish products in the Province of New Brunswick.

The European tinsplate and steel cartel is an established organization in Europe and is well known to all those who have dealings in tinsplate or similar commodities. The cartel fixes the price, not only in Canada but in most European countries and the United States. The English manufacturer of tinsplate has been, and is now, taking advantage of it. The cartel has announced the prices for the second quarter of 1938. No decrease is made.

Scrap is now selling at \$13.00 or \$14.00 a ton against \$23.00 or \$24.00 a ton a year ago. Tin itself has gone to a new low level, 40% less than that at which it was sold last year. But, notwithstanding the low price of tin and scrap which are the materials in tinsplate, the cartel has fixed the price of tinsplate at 18% above what it was last year. This particular feature of the matter will cost the Maritime Provinces, as it is estimated, several hundred

thousand dollars annually, as it will affect the price of every can that is used. In Canada, as a whole, the cost will amount to several millions.

Canada has never manufactured a quantity of tinplate sufficient to supply the needs of the Dominion. Over 80% of that used is imported.

It was understood at the time of the British preference of 20% that advantage was not to be taken to enhance prices. The English manufacturers were members of the European cartel and we have reason to believe that they have been operating quite contrary to the conditions under which the preference was granted.

Our submission is that there must be a change made by which those who use tinplate in New Brunswick for the purpose of canning any of the natural products of the province may be encouraged in order that business can be successfully carried on. Some radical measure should be taken to put an end to the operation of the combine so far as this Dominion is concerned. It is evidently an illegal combination in restraint of trade.

If prices were permitted to rest upon the basis of fair competition and the dumping duties were abolished, great encouragement would be afforded to most important industries in this Province.

THE FISHERIES

THE HALIFAX AWARD

The Halifax Award had its origin in the Treaty of Washington, 1871. Article XVIII of that treaty provided that United States fishermen might fish in common with Canadian fishermen in the territorial waters of our Atlantic Coast, in addition to their privileges there under the Treaty of 1818, excepting for shellfish, salmon, shad and fish taken in rivers and the mouths of rivers. Similar privileges were given Canadian fishermen in Atlantic United States territorial waters as far south as the 39th parallel. Article XXI provided for the removal of the duty in both countries on fish and fish products, except the products of inland fisheries and fish packed in oil, imported from the other country. At that time there was no commercial fishery in British Columbia so that while the fisheries of that Province were not excluded in express terms, they were in fact. Article XXII of the Treaty provided for the appointment of a

commission to assess the greater value of the fishery privileges granted by Canada over those granted by the United States.

The commission under the last above cited Article met at Halifax in 1877 and after an exhaustive investigation, awarded Great Britain \$5,500,000 as the extra value of the fishing privileges given by Canada. This payment was made by the United States in 1879 and has been known since as the "Halifax Award". One million dollars of the amount was handed over to Newfoundland as its share. The amount of the expense incurred by Canada in connection with the Claims Commission that was paid out of the Award, was \$133,351.56. The total amount transmitted to the Government of Canada out of the Award was \$4,490,882.64.

The disposal that should be made of Canada's share of the Award was considered by Parliament in 1879. The Maritime Members contended that the money should be paid to the Atlantic Coast fishermen or to the different Provincial Governments affected. Their arguments did not prevail, and it was held that the money belonged to Canada as a whole and consequently should be paid into consolidated revenue, which was done.

Strong agitation from the Maritime Provinces continued, and in the dying days of the Parliamentary session of 1882, which was the last session of that Parliament, the late Sir Leonard Tilley moved,—“That the House resolve itself into a committee of the whole to consider a certain proposed resolution to provide for an annual grant of \$150,000 to aid in the development of the sea fisheries, etc.” This resolution was approved and was followed by “An Act to Authorize an Annual Grant for the development of the Sea Fisheries and Encouraging of the Building of Fishing Vessels.” The Act does not state that the annual amount to be distributed as bounty was regarded as the interest on the Award, and indeed does not limit the bounty to the Atlantic Coast. That the Act applied beyond the Atlantic Coast apparently never entered the mind of anyone at the time, but the payments made under it have always been restricted to the fishermen on that coast.

After the bounty was started it was found that \$150,000 did not cover the bounties authorized, and an additional sum was voted from year to year until 1891 when the Statute was changed to increase the grant to \$160,000 at which it has since stood.

Since that time up to and including 1936, the following amounts have been paid out as bounties:

Nova Scotia	\$5,122,717.77
New Brunswick	935,144.67
Prince Edward Island	563,995.47
Quebec	2,086,424.90
	<hr/>
	\$8,708,282.81

The following statement will afford information as to the trend of the fishing bounty payments since the inception of the scheme.

Year	No. of Vessels	Tonnage	No. of men on vessels	No. of Boats	No. of men on Boats
1883	902	34,549	7,237	12,272	26,132
1888	827	31,640	6,631	14,772	28,256
1893	805	27,979	5,744	12,830	22,269
1898	784	25,108	5,901	13,747	23,501
1904	851	26,501	6,361	11,327	19,149
1909	874	20,195	4,993	12,082	20,129
1914	955	23,811	6,122	13,261	22,828
1919	749	18,896	5,342	12,319	21,918
1924	533	12,543	3,355	9,571	16,459
1929	546	13,597	3,558	9,000	16,749
1930	567	13,506	3,603	9,741	17,415
1931	587	12,919	3,426	10,570	19,411
1932	586	11,232	3,021	11,706	21,323
1933	576	11,321	3,105	12,260	22,442
1934	617	12,217	3,339	12,006	21,917
1935	600	12,181	3,378	11,898	21,227
1936	529	11,035	3,121	11,764	20,454

The annual bounty payments are usually about as follows:—

- (a) On vessels of ten tons or over \$1 per ton up to eighty tons;
- (b) On boats under ten tons \$1.00;
- (c) To fishermen on vessels about \$6.50;
- (d) To fishermen in boats from \$4.00 to \$6.00.

It is suggested that the Commission examine into this question having in view the following considerations:

1. That the net amount paid to Ottawa as a result of the Halifax Award does not properly belong to Ottawa but to those provinces whose shore fishing rights were involved in the Treaty of Washington.

2. That the bonus paid since 1883 bears no connection with the Halifax Award.

3. That the net capital amount, with accrued interest, should be distributed to the provinces directly concerned; and that an Arbitration Board representing said provinces be set up to agree upon an equitable manner of distribution.

4. That the capital amounts so distributed should be retained as a trust to promote the interests of the fishermen.

5. That the distribution of the bonus is not on an equitable basis as demonstrated by the data set forth below.

TOTAL VALUE OF THE PRODUCTS OF THE FISHERIES IN THE MARITIME PROVINCES AND QUEBEC

1929 - 1935

Year	Total	Prince Edward Island	Nova Scotia	New Brunswick	Quebec
	\$	\$	\$	\$	\$
1929	21,593,590	1,297,125	11,427,491	5,935,635	2,933,339
1930	18,909,054	1,141,279	10,411,202	4,853,575	2,502,998
1931	15,188,317	1,078,901	7,986,711	4,169,811	1,952,894
1932	12,335,088	988,919	6,557,943	2,972,682	1,815,544
1933	11,981,462	842,345	6,010,601	3,000,045	2,128,471
1934	14,624,278	963,926	7,673,865	3,679,970	2,306,517
1935	14,649,458	899,685	7,852,899	3,949,615	1,947,259
Total	109,281,247	7,212,180	57,920,712	28,561,333	15,587,022
Percentage of Total	100.0%	6.6%	53.0%	26.1%	14.3%
Total Bounties Paid (includes 1936)	\$8,708,282.81	\$563,995.47	\$5,122,717.77	\$935,144.67	\$2,086,424.90
Bounties (%)	100.0%	6.5%	58.8%	10.7%	24.0%

It should be borne in mind as well that production methods in Nova Scotia are by larger vessel and the Province of New Brunswick is consequently penalized because it uses smaller equipment. Therefore bounty payment should be established on some basis to enable New Brunswick to share more equitably on the basis of employment and production.

AGRICULTURE

The federal and provincial governments have been acting together in connection with agricultural matters. The Dominion and the Province each maintain a staff. The two organizations are working with excellent co-operation and have arranged the work so that there is no duplication of activity. There is constant contact by conferences between the several departments.

The work of the federal department comprises first, experimental work, second research and third the setting up of grade standards for agricultural products, and the administration of regulations respecting the same.

The provincial department has carried on the work of education, the promotion of production and the administration of various policies affecting the farming industry in the Province.

Owing to the fact that New Brunswick has comparatively little industrial development there is no large local market for the product of the farm.

The Province is deeply interested in the development of the primary industries, particularly agriculture and has assisted in that regard so far as the finances will permit.

Under an Act of Parliament passed in 1913 the sum of \$10,000,000 was authorized by the Dominion Government for the promotion of education in agriculture in the provinces. This was available over a period of ten years and during that time this Province received amounts varying from \$32,000 to \$96,000 a year. As the result of this assistance a base was laid for an agricultural education program which has been executed in part with most excellent results. In fact the results have been so satisfactory that there is a constant demand for the extension of services respecting agriculture but the revenues of the Province do not permit of the expense incidental to such extension.

At the Dominion-Provincial conference in 1935 a resolution was moved by the Minister of Agriculture for New Brunswick, seconded by the Minister of Agriculture for Ontario and adopted in the following terms:

“Resolved: That the committee on agriculture and marketing of the Dominion-Provincial conference respectfully express the opinion that the most effective assistance which the Dominion Department of Agriculture can render to agricultural education would be by restoring the former grant in aid of agriculture of \$1,000,000 per year for a period of ten years, to be expended by the provincial departments of agriculture, according to agreement with the Dominion department, and under the supervision of an official of the Dominion Department of Agriculture appointed for that purpose”.

Our submission is that the Commission may be able to recommend that the above mentioned assistance be given.

The Province desires to give credit to the Department of Agriculture for the Dominion for the research and experimental work carried on at the Department in the interests of the science of agriculture.

The production program of the Province was not difficult in the early days but has become increasingly so on account of the opening up of large areas of free land in western Canada, of immigration, of modern development of transportation, cold storage, in the loss of the United States market as a result of the tariff policies and also by reason of recent policies adopted by the industrial provinces looking to the development of agriculture to a position where such provinces will be self sustaining.

It is now found by reason of the above consideration that the marketing of our farm products is attended with the greatest difficulty.

The principal resources of the people of New Brunswick have been incidental to the activities of agriculture, lumbering and fishing. We have been handicapped for many years through the loss of our young people who have emigrated to the West and to the industrial centres in the United States and in the Dominion.

At the present time this emigration has not been pronounced and there is more necessity that markets may be found

for the products of the farm, in order that our young people may be able to make a livelihood through settlement on the fertile lands of the Province.

New Brunswick is particularly well adapted to produce potatoes and in recent years that product has been one of our most important crops. Formerly we had a market in the United States and in Canada. Through a tariff policy we have been shut off from the United States market and through an active policy carried on now in the industrial centres in the Dominion with a view to encouraging the production of farm commodities there and by reason of burdensome freight rates we have been deprived of our market in those industrial provinces.

In 1918, 1919, 1920 and 1921 the value of Canadian export potatoes to the United States was \$2,436,000, \$1,643,000, \$6,819,000 and \$8,328,000 respectively. In 1933, 1934, 1935 and 1936 the exports were \$291,000, \$1,337,000, \$337,000 and \$303,000 respectively.

At the Dominion-Provincial Conference in 1935 a resolution was passed, moved by the Hon. Minister of Agriculture for New Brunswick and seconded by the Hon. Minister of Agriculture for Quebec as follows:—

“WHEREAS the importance of investigation and development of all possible export markets for both seed and table stock potatoes is of the greatest importance to the five eastern provinces of Canada;

And whereas it has been an accepted policy that the investigation and development of markets is a responsibility of the Dominion Government;

Be it resolved: That the Committee on Agriculture and Marketing of the Dominion-Provincial Conference strongly recommend to the Dominion Government that immediate steps be taken to establish the necessary machinery to effectively carry out the purpose of this resolution.”

In the year last mentioned the Government of the Province requested the Dominion to assist in the endeavor to obtain a market for New Brunswick seed potatoes in South American countries. The response of the Dominion was so discouraging that the Province was compelled to pursue its own investigations.

The result was that the Province was able to export last year 558,000 crates, each 110 lbs., of seed potatoes to South America, which was of the greatest assistance to our farming communities.

New Brunswick has also, at certain periods, sent its representatives overseas in order that a market may be found for our potatoes and other agricultural products but there was very little encouragement on that behalf afforded by the Dominion. It is felt that had the Dominion lent its efforts in this connection a market might have been found abroad for some of our farming commodities. Many of our farming people hold the opinion that the Dominion Department of Agriculture and the Department of Trade and Commerce have not made the most of their opportunities in connection with the establishment of markets outside of Canada and have not regarded suggestions made from time to time by the Province looking to this development.

It is hoped that this Commission may be able to recommend that the Dominion Government participate to a greater extent in the expense of exploring the opening up and maintaining of a market for our potatoes in South America and elsewhere.

Under the Ottawa Agreements of 1934 Canada was allotted a quota of bacon for shipment into England amounting to two hundred and eighty million pounds. Shortly after this the Province of New Brunswick launched a program to increase the production of bacon hogs and with a view to participating in the English market for bacon. It is frequently argued that by reason of our proximity to this market we are in a favoured position, but the circumstances do not bear this out. Canada's chief competitor in the British market for bacon is Denmark. We in this Province are not in a specialized grain growing area and our grain production is in competition with the free land of western Canada and cheap land and labour elsewhere in the world. For the expansion of our hog production we have to depend in part on the importation of certain feeds from beyond the Province. The same is true in Denmark. They are not a grain growing country. The peculiar part of the situation is that the Danish hog feeder can buy grain and grain products from western Canada landed in Denmark almost as cheap as such feed can be landed in this Province, and when it comes to marketing his bacon he has a decided advantage in transportation charges. This situation is a result of the high domestic freight rate amounting to nine cents per hundredweight more on shipments

of grain and grain products from western Canada for consumption in New Brunswick than the rate on the same shipments for export. There is an immediate need that a change be made in this respect. Our efforts for the development of an export bacon industry in this Province are continually handicapped by the high price of feed and it is impossible for us to explain to our producers why they have to pay nine cents per hundredweight more on shipments of grain products from western Canada to Saint John than the citizens of Continental Europe. The domestic lake and rail rate from Port Arthur and Fort William to Saint John on grain products for domestic use is thirty cents per hundredweight and the all rail rate thirty-five cents. The export lake and rail rate is twenty one cents per hundredweight and the all rail rate for that purpose is twenty six and a half cents. It is estimated that this extra charge for feed products in this Province costs the consumers approximately one hundred thousand dollars a year.

The agreement referred to respecting the export of bacon expires in 1939. Our hog production program has met with a favourable response. We hope that the British market for Canadian bacon will be retained and with this end in view would request an adjustment in freight rates along the lines indicated, so that this industry might be maintained.

THE POSITION OF THE DOMINION

On the hearing by this Commission in one of the provinces counsel was asked to suggest some plan by which the Dominion would be able to finance for increased allowances to the provinces.

It would seem to be difficult to recommend any complete method, at least until the re-examination of the economic position of the Dominion is completed as we presume it will be by this Commission and the facts made available to the provinces.

In the meantime it may be stated that in respect to the special claims of the Province as hereinafter set forth, apart from the question of conditional grants-in-aid, we are quite willing to accept the bonds of the Dominion, at the current rate of interest, to cover the amount of such special claims, on a fair adjustment, with the condition that such bonds be held by the Province as an additional sinking fund provision for the redemption of our outstanding bonded liabilities.

PART 2

PART 2

THE CONFEDERATION AGREEMENT

In addition to the submissions made in Part I the Province of New Brunswick presents a special claim against the Dominion in respect of the agreement upon which the Confederation was founded.

CONDITIONS IN UPPER AND LOWER CANADA

Before Confederation the situation in Upper and Lower Canada was critical.

We refer to the remarks of Sir E. P. Tache, Premier, Receiver General and Minister of Militia in the Government of Canada, reported in the Debates of the Legislature of Canada, 1865, at page 6:

“He would, then, first address himself to what he considered the intrinsic merits of the scheme of Confederation, and he would, therefore, say that if we were anxious to continue our connection with the British Empire, and to preserve intact our institutions, our laws, and even our remembrances of the past, we must sustain the measure. If the opportunity which now presented itself were allowed to pass by unimproved, whether we would or would not, we would be forced into the American Union by violence, and if not by violence, would be placed upon an inclined plane which would carry us there insensibly. In either case the result would be the same. In our present condition we would not long continue to exist as a British colony.”

And at page 9:

“At the time these measures were resolved upon, the country was bordering on civil strife, and he would ask if it was not the duty of both sides to do all they could to prevent the unfortunate results which would have followed.”

At page 26 Sir John A. Macdonald is reported to have said:

“Then, men of all parties and all shades of politics became alarmed at the aspect of affairs. They found that such was the opposition between the two sections of the Province, such was the danger of impending anarchy, in consequence of the irreconcilable differences of opinion, with respect to representation by population between Upper and Lower Canada that unless some solution of the difficulty was arrived at we would suffer under a succession of weak governments—weak in numerical support, weak in force and weak in the power of doing good. All were alarmed at this state of affairs. None were more impressed with this momentous state of affairs and the grave apprehension that existed of a state of anarchy, destroying our credit, destroying our prosperity, destroying our progress, than were the Members of this present House.”

At page 27:—

“Knowing this, we availed ourselves of the opportunity and asked if they would receive a deputation from Canada who would go to meet them at Charlottetown for the purpose of laying before them the advantages of a larger and more extensive union by the junction of all the provinces in one great government under our common Sovereign.”

And at page 32:—

“If we are not blind to our present position, we must see the hazardous situation in which all the great interests of Canada stand in respect to the United States. I am no alarmist. I do not believe in the prospect of immediate war. I believe that the common sense of the two nations will prevent a war, still we cannot trust to probabilities.”

From the above it is quite apparent that the statesmen of Upper and Lower Canada were vitally concerned and were anxiously looking forward to some solution of their troubles.

CONDITIONS IN NEW BRUNSWICK

New Brunswick was in a quite different position. It was regarded as the wealthiest section of British North America. There was no racial controversy. The economic situation was satisfactory. The relations with the other provinces were amicable. It had relatively large manufacturing and commercial organizations. Banking houses, financial institutions and insurance companies were established and were giving service in the assistance of industries. The people were contented, well-ordered and enterprising and there was no reason for New Brunswick to seek a union with Canada. That it entered the Confederation upon faith of an agreement will appear later on in this submission.

Sir John A. Macdonald, then Attorney General, West, of Canada, as reported in the Debates of the Legislature of Canada, 1865, at page 32 made statements which have a bearing upon the then situation. Speaking of the Maritime Provinces he said:—

“They will form themselves into a power, which, though not so strong as if united with Canada, will, nevertheless, be a powerful and considerable community, and it will be then too late for us to attempt to strengthen ourselves by this scheme, which, in the words of the resolution, ‘is for the best interests, and present and future prosperity of British North America.’ If we are not blind to our present position, we must see the hazardous situation in which all the great interests of Canada stand in respect to the United States.”

The number of persons employed in the manufacturing industry in New Brunswick in 1870 was 18,352 and in the Dominion 187,942 which, according to population, was relatively the same.

In 1935 the number in New Brunswick shrunk twenty-five per cent to 13,937, while the number in the Dominion increased three hundred and ten per cent to 582,874.

In July, 1869, according to Dun's credit rating, there were in New Brunswick four firms with a rating of \$1,000,000 or over while in Ontario there were but two of such firms. The average commercial rating in New Brunswick was substantially higher than that in Ontario and Quebec.

NEGOTIATIONS

In 1864 there was a meeting at Charlottetown attended by delegates from the Maritime Provinces for the purpose of discussing the expediency of a Union of those provinces.

The Government of Canada, learning of the Conference, asked permission to send a delegation to Charlottetown and representatives of that Government attended. Meetings were also held later at Halifax, Saint John and other places.

In October, 1864, at the invitation of the Governor of Canada, Lord Monck, a deputation from the Maritime Provinces met with representatives of the provinces of Canada and Newfoundland at Quebec to consider the desirability of a union of all the provinces and, if possible, of devising a scheme of union.

At that conference certain resolutions were adopted as the basis of a proposed federation.

These resolutions were submitted to the provinces interested but were not approved by Nova Scotia or by New Brunswick. Newfoundland and Prince Edward Island did not again participate in the negotiations.

A further attempt was made by Nova Scotia and New Brunswick to resume consideration of the question of a Maritime Union but the Government of Prince Edward Island declined to negotiate further.

In 1865 the Legislature of the united provinces of Upper and Lower Canada passed an address to the Queen, praying that a measure might be submitted to the Imperial Parliament for the purpose of uniting the colonies in one government with provisions based on the resolutions of the Quebec conference. The Imperial Government refused to consider any such measure until the provinces had reached an agreement in respect of the matter.

In 1866 the Legislature of Nova Scotia adopted the following resolution:—

“Resolved, therefore, that His Excellency the Lieutenant Governor be authorized to appoint delegates to arrange with the Imperial Government a scheme of union which will effectually assure just provision for the rights and interests

of this province. Each province to have an equal voice in such delegation. Upper and Lower Canada being, for this purpose, considered as separate provinces."

The Legislature of New Brunswick adopted a similar resolution and delegations from the provinces, except Newfoundland and Prince Edward Island, were duly appointed and met in London during the same year.

THE LONDON RESOLUTIONS

Resolutions were passed at the London Conference and constituted an agreement between the provinces. They were submitted to the Colonial Secretary with a request that the sanction of the Imperial Government should be sought for the union of the provinces on the principles adopted by the Conference.

The Quebec Resolutions formed the basis of discussion at the London Conference, and the agreement of Confederation was made at London.

The fact that each province was to have one vote is significant and must imply that the delegation at London had the right to decide upon the terms of Union.

The proceedings of the London Conference are set out in Pope's Confederation Documents Hitherto Unpublished (1895), pages 305-308.

The following communications were sent by Honourable John A. Macdonald to the Colonial Secretary:—

"Westminster Palace Hotel,
London, S. W., December 4th, 1866.

My Lord,

I have the honour to inform you that the Delegates from the Provinces of Canada, Nova Scotia, and New Brunswick, met this morning, and formed themselves into a Conference for the purpose of arranging the terms of Union of those Provinces.

The Gentlemen forming the Conference are as follows:—

CANADA

The Hon. John A. Macdonald, Attorney-General U.C., and
Minister of Militia of Canada.
The Hon. G. E. Cartier, Attorney General of Lower Canada.
The Hon. A. T. Galt.
The Hon. W. McDougall, Provincial Secretary.
The Hon. W. P. Howland, Minister of Finance.
The Hon. H. L. Langevin, Postmaster-General.

NOVA SCOTIA

The Hon. Charles Tupper, Provincial Secretary.
The Hon. W. A. Henry, Attorney General.
The Hon. J. W. Ritchie, Solicitor General.
The Hon. A. G. Archibald.
The Hon. J. McCully.

NEW BRUNSWICK

The Hon. P. Mitchell, President of Council.
The Hon. R. D. Wilmot.
The Hon. S. L. Tilley, Provincial Secretary.
The Hon. Charles Fisher, Attorney General.
The Hon. J. M. Johnson.

I have the honour further to inform Your Lordship that I was then appointed Chairman, and Lieut. Col. H. Bernard, Secretary of the Conference.

I have the honour to be, My Lord,

Your Lordship's most obedient servant,

JOHN A. MACDONALD.

The Rt. Honourable
The Earl of Carnarvon
Secretary of State for the Colonies."

Westminster Palace Hotel.
London, S. W. 25th December, 1866.

Dear Lord Carnarvon,

I am happy to inform you that the **Delegates who have sat**

steadily from the 4th to the 24th inst., have arrived at a satisfactory conclusion, and have adopted by the unanimous vote of the "Provinces," a series of resolutions which I shall transmit to-morrow morning to your Lordship at the Colonial Office.

The Delegates desire me to convey to you their opinion that it is expedient to avoid any publicity being given to the resolutions until the Bill is finally settled and ready to be laid before Parliament. They think that their early publication would answer no good purpose, and might tend to premature discussion on imperfect information of the subject both in this country and America.

Believe me,

Dear Lord Carnarvon,

Very sincerely yours,

John A Macdonald.

The Rt. Honourable
The Earl of Carnarvon,
Secretary of State for the Colonies."

"Westminster Palace Hotel,

London, December 26, 1866.

My Lord,

I have the honour to transmit to you by desire of the Conference of Delegates from Canada, Nova Scotia and New Brunswick, a series of resolutions. **They submit these resolutions for the favourable consideration of Her Majesty's Government with a view to the early introduction of a Bill into the Imperial Parliament based upon them.**

The Delegates purpose to re-assemble here on Friday, the 28th, inst., and shall be glad to wait on Your Lordship at your convenience for the purpose of arranging the course of action.

I have the honour to be, My Lord,

Your Lordship's very obedient servant,

JOHN A. MACDONALD

"The Rt. Honourable The Earl of Carnarvon"

It is noted that Honourable Mr. Macdonald was chairman of this Conference and Lieutenant Colonel H. Bernard, the secretary, that the agreement was signed by these gentlemen as such and duly delivered to the Secretary of State for the Colonies. In the communication of December 4th the names of the delegates are stated and these persons were the Fathers of Confederation.

It will be observed that the provinces were represented by members of their governments. Canada by both Attorneys General, the Provincial Secretary, the Minister of Finance and the Postmaster General; Nova Scotia by the Attorney General, the Provincial Secretary and the Solicitor General; New Brunswick by the President of the Council, the Attorney General and the Provincial Secretary and that the resolutions were passed unanimously.

Accompanying the letter from Mr. Macdonald was the agreement contained in the London Resolutions which had been adopted by the Conference and by which in Resolution 67 it was stated:—

“The sanction of the Imperial Parliament shall be sought for the union of the provinces on the principles adopted by this Conference.”

and 69

“That a copy of these resolutions, signed by the Chairman and Secretary of the Conference, be transmitted to the Right Honourable the Secretary of State for the Colonies.”

The resolutions of the London Conference, the resolutions of the Quebec Conference and other documents were printed by the Queen's Printer in England in 1867 in a blue book, and presented to both Houses of Parliament by command of Her Majesty on the 8th of February of that year.

THE AGREEMENT OF CONFEDERATION

The British North America Act is conclusive as to the fact that there was a Confederation agreement. The preamble states that the provinces "have expressed their desire to be federally united." In section 145 it is set out that the provinces have "joined in a declaration" "and have consequently agreed."

In looking for this expression of "desire" we find it in no. 3 of the London Resolutions, which provides that in framing a Constitution the Conference desired "to follow the model of the British Constitution so far as circumstances will permit."

This seems to be the only place where the word "desire" is used and thus the preamble to the Act has a distinct reference to the London Resolutions.

The words "joined in a declaration" and "consequently agreed" were also from the Act and such words necessarily mean that there must have been some joint action, evidenced by some joint document. The London Resolutions constituted the only joint document of which any record can be found in which there is a joint declaration. The London agreement was a joint declaration. The words of this enactment follow the wording of the London Resolution no. 65.

The Dominion Parliament has made a legislative admission to the same effect in the preamble to the Act respecting the construction of the Intercolonial Railway (1867, Ch. 13) as follows:—

"Whereas the Provinces of Canada, Nova Scotia and New Brunswick **joined in a declaration** that the construction of the Intercolonial Railway is essential to the consolidation of the Union of British North America, and to the assent thereto of Nova Scotia and New Brunswick; **and consequently agreed** that provision should be made for its immediate construction by the Government of the Dominion of Canada; and whereas in order to give effect to that agreement it was declared by the one hundred and forty-fifth section of the Imperial Act, known as "The British North America Act, 1867," that it should be the duty of the Government and Parliament of Canada, to provide for the commencement within six months after the Union of a railway connecting

the River St. Lawrence with the City of Halifax in Nova Scotia, and for the construction thereof without intermission, and the completion thereof with all practicable speed; And whereas, the Imperial Act known as "The Canada Railway Loan Act 1867" authorizes the guarantee by the Imperial Government of the interest on a loan to be raised by Canada towards the construction of the Intercolonial Railway, connecting the Port of Riviere du Loup in the Province of Quebec, with the line of railway leading from the City of Halifax in the Province of Nova Scotia, at or near the Town of Truro, on certain conditions therein mentioned. Therefore, in fulfilment of the duty imposed on the Government and Parliament of Canada as aforesaid, and in order to the raising of the said loan, so to be guaranteed as aforesaid, Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:—"

The **Boldface** in the statements quoted in this Brief do not appear in the records from which the quotations are made and are inserted for the purpose of drawing particular attention to words which we desire to emphasize.

The Canada Railway Loan Act, 1867, Imperial, provides for the guarantee mentioned and stipulates that there must be an Act of the Parliament of Canada within two years after the Union providing to the satisfaction of one of Her Majesty's principal secretaries of State as follows:—

- (1) "For the construction of the railway;
- (2) For the use of the railway at all times for Her Majesty's military and other services."

This Act had direct regard for the London Resolutions as it was in these resolutions, and in them alone, that mention was made of the Imperial guarantee for the construction of the railway which is referred to in the above enactment. The question of guarantee is not mentioned in the British North America Act nor in the Quebec Resolutions.

This Imperial Act is referable distinctly to the London agreement and to that agreement alone. It was passed to fulfill a pledge that is mentioned in Resolution 65 of the London agreement and the pledge was the consideration upon which the provinces relied when they undertook that the railway should be constructed.

The Right Honourable Charles Adderley, the Under Secretary for the Colonies, who had charge of the Bill for the Confederation of the Provinces in the House of Commons, stated in the Debate (Hansard's Parliamentary Debates, 3rd Series CLXXXV (1867) at page 1168).

"There is, I believe, only one other clause to which I need now allude, and that is a clause by which these provinces bind themselves immediately to proceed to the construction of a great international railway, which they regard as the back bone of the general scheme of union. There is nothing in this Bill which implicates this House or this country in that underiaking; but it is only right, I should add that the adoption of that provision will render it necessary for me to ask the House to guarantee the interest of a loan by means of which the railway is to be constructed."

Mr. Aytoun, Member of Parliament, in the same Debate—page 1180, is reported to have said:—

"That clause provided that it should be the duty of the Canadian and other local parliaments to construct a railway from Halifax to Quebec; and if the House assented to that provision they would be bound in honour to give the Imperial guarantee to the loan which was to be raised for the purpose, upon the promise of which it was that the delegates from the Colonies had undertaken the construction of this line."

It will be seen from the above quotations that the Imperial Parliament recognized that there was an agreement and identified the London Resolutions containing the agreement.

The Earl of Carnarvon, Colonial Secretary, in introducing the Bill in the House of Lords, reported in "Hansard's Parliamentary Debates, Third Series, Vol. CLXXXV. 5th February, 1867 to 15th March, 1867" at page 558 said:—

"The Conference of Charlottetown was adjourned to Quebec, and there, in the month of October, those resolutions were drawn up which have since become famous under the name of "The Quebec Resolutions," and which, with **some slight changes**, form the basis of the measure that I have now the honour to submit to Parliament. **To those resolutions all the British Provinces in North America were, as I have said con-**

senting parties, and the measure founded upon them must be accepted as a treaty of union."

At Page 560:—

"These are conditions difficult under the most favourable circumstances to secure; but they are complicated in this instance by a third, which has been made a fundamental principle of the measure **by the several contracting parties**, and the object of which is to provide for a permanent representation and protection of sectional interests."

At page 567:—

"In the same category must be placed the 145th clause, which makes it the duty of the Central Parliament and Government to provide for the commencement of the Intercolonial Railway within six months of the union. **Such an undertaking was part of the Compact between the several provinces**, and it was an indispensable condition on the part of New Brunswick."

At page 568:—

"And first, it has been urged that this Union should have been a legislative rather than a federal one. I admit to a certain extent, the validity of the objection. When Upper and Lower Canada were connected in a legislative Union, Lord Durham distinctly contemplated a similar incorporation of the Maritime Provinces. Nor are there wanting to this opinion many of the ablest of Canadian statesmen. But the answer is simply this—that a **legislative Union is, under existing circumstances, impracticable**. The Maritime Provinces are ill-disposed to surrender their separate life, and to merge their individuality in the political organization of the general body. It is in their case impossible, even if it were desirable, by a stroke of the pen to bring about a complete assimilation of their institutions to those of their neighbors. Lower Canada, too, is jealous, as she is deservedly proud, of her ancestral customs and traditions; she is wedded to her peculiar institutions, and will enter this Union only upon the distinct understanding that she retains them."

"But it has been objected that this union of provinces will be a kingdom, not a Confederation, and that being an embodiment of the monarchical principle, it will constitute a challenge, to our powerful republican neighbour across the

border. Now I am at a loss to understand how these Provinces, when united, can be one whit more or whit less of a kingdom than when separate. There will be, with some few modifications, the same institutions, the same forms of government, and even the same men to give life and movement to them. It is but a development of the existing system."

And at page 582:—

"It was, of course, within the competence of Parliament to alter the provisions of the Bill; but he should be glad for the House to understand that [the Bill partook somewhat of the nature of a treaty of union, every single clause in which had been debated over and over again, and had been submitted to the closest scrutiny, and, in fact each of them represented a compromise between the different interests involved. Nothing could be more fatal to the Bill than that any of those clauses, which were the result of a compromise, should be subject to much alteration. Of course, there might be alterations where they were not material, and did not go to the essence of the measure, and he should be quite ready to consider any amendments that might be proposed by the noble Lord in Committee. But it would be his duty to resist the alteration of anything which was in the nature of a compromise, and which, if carried, would be fatal to the measure."

Therefore it is conclusive that there was an agreement of some kind and that the Parliament of Canada had knowledge of it when the Dominion passed the Act above quoted.

That there was an agreement of Confederation is settled by decisions of the Judicial Committee of the Privy Council.

In re Aerial Navigation (1931) 1 D.L.R. at page 65 the Judicial Committee said:—

"Inasmuch as the Act embodies a compromise under which the original Provinces agreed to federate, it is important to keep in mind that the preservation of the rights of minorities was a condition on which such minorities entered into the federation and the foundation upon which the whole structure was subsequently erected. The process of interpretation as the years go on ought not to be allowed to dim

or to whittle down the provisions of the original contract upon which the federation was founded, nor is it legitimate that any judicial construction of the provisions of ss. 91 and 92 should impose a new and different contract upon the federating bodies."

In the *Weekly Rest, Minimum Wage and Hours of Work* reference (1937) 1. D. L. R. at page 682, Lord Atkin in delivering the judgment of the Committee said:—

"The distribution is based on classes of subjects: and as a treaty deals with a particular class of subjects, so will the legislative power of performing it be ascertained. No one can doubt that this distribution is one of the most essential conditions, probably the most essential condition in the interprovincial compact to which the **British North America Act** gives effect."

And at page 684:—

"While the Ship of State now sails on larger ventures and into foreign waters, she still retains the watertight compartments which are an essential part of her original structure."

In the *Maritime Bank Case* (1892) A. C. at page 441, Lord Watson, delivering the judgment said:—

"Their Lordships do not think it necessary to examine in minute detail the Provisions of the Act of 1867 which nowhere professed to curtail in any respect the rights and privileges of the Crown, or to disturb the relations then subsisting between the Sovereign and the Provinces. The object of the Act was neither to weld the Provinces into one, nor to subordinate Provincial Governments to a central authority, but to create a federal government in which they should all be represented, entrusted with the exclusive administration of affairs in which they had a common interest, each province retaining its independence and autonomy. That object was accomplished by distributing between the Dominion and the Provinces, all powers, executive and legislative and all public property and revenues, which had previously belonged to the Provinces. So that the Dominion Government should be vested with such of these powers, properties and revenues, as were necessary for the due per-

formances of its constituted functions and that the remainder should be retained by the Province for the purpose of Provincial Government.”

And at page 442:—

“It is clear, therefore, that the Provincial Legislature of New Brunswick does not occupy the subordinate position which was ascribed to it in the argument of the appellant. It derives no authority from the Government of Canada and its status is in no way analogous to that of a Municipal Institution, which is an authority constituted for the purpose of local administration.”

In the *Great West Saddlery Company against the King* (1911) 2 A. C. at page 100, Lord Haldane, in delivering the opinion of the Committee said:—

“Within the spheres allotted to them by the Act, The Dominion and the Provinces are rendered, on general principle, co-ordinate governments. As a consequence, where one has legislative power the other has not, speaking broadly, the capacity to pass laws which will interfere with its exercise.”

Speaking in Montreal in 1883 Lord Carnarvon said:—

“The British North America Act is not to be construed merely as a Municipal Act but should be viewed as a treaty of alliance requiring sobriety of judgment and plain common sense to interpret it.”

The British North America Act states in the preamble:—

“Whereas the provinces of Canada, Nova Scotia and New Brunswick, have expressed their desire to be federally united.”

The meaning of the word “federal” is, as found in Webster’s International Dictionary: “of or pertaining to a compact, league or treaty.”

When the issue was submitted to London with reference to the Merchant’s Shipping Act, the Duke of Buckingham, Chandos, Secretary of State for the Colonies, advised Viscount Monck, then Governor-General of Canada, on March 12th, 1868:—

“Although Canada, Nova Scotia, and New Brunswick are by section 3 of its Act of last session (B. N. A. Act) formed into one Dominion under the name of Canada, the Province of New Brunswick still exists as a province or territory.”

Attorney General Macdonald at page 15 of the “Debates, Legislature of Canada, 1865,” said:—

“It was obvious that unless the scheme were adopted as it had been settled between the different provinces, if they prosecuted it further, they would have to commence *de novo* and he had no hesitation in expressing his belief that if the scheme was not now adopted in all its principal details, as presented to the House, we could not expect to get it passed this century.” . . . “The resolutions on their face bore evidence of compromise; perhaps not one of the delegates from any of the provinces would have propounded this scheme as a whole, but being impressed with the conviction that it was highly desirable with a view to the maintenance of British power on this continent that there should be Confederation and a junction of all the provinces, the consideration of the details was entered upon in a spirit of compromise.”

At page 16:—

“These resolutions were in the nature of a treaty and if not adopted in their entirety, the proceedings would have to be commenced *de novo*.”

At page 31:—

“As I stated in the preliminary discussion, we must consider this scheme in the light of a treaty.”

Honourable Mr. Brown, then President of the Executive Council of Canada at page 89 of the Debates of the same year:—

“But honourable gentlemen must see that the limitation of the numbers in the Upper House lies at the base of the whole compact on which this scheme rests.”

His Majesty the King, in right of the Dominion assumed these obligations which were imposed upon the Dominion by the

agreement. Our submission is that these obligations became contractual obligations to be performed by the Dominion.

The Dominion had imposed upon it the obligation of constructing the Intercolonial Railway and of applying thereto the Imperial guarantee for £3,000,000 sterling which had been pledged for the work, of operating the railway as a service and of providing the improvements required for the development of the trade of the Great West with the Seaboard, which improvements were to be prosecuted at the earliest possible period that the state of the finances would permit.

That it was necessary for the Dominion to have assumed the responsibilities as to the above and that the provinces, when Confederation was consummated, were no longer charged with that responsibility or capable of carrying out the terms of that agreement is abundantly clear. The Dominion, accepting as it did, the Imperial guarantee necessarily became a party to the Confederation compact. It thereby, under the Imperial Canada Railway Loan Act, agreed to operate the railway "at all times", as it must preserve the railway in proper operating condition in order that it could be used for Her Majesty's military and other services.

Therefore it became at once impossible for the provinces to carry out the terms of the agreement because the provinces had not the duty of operating the railway and could not, for that reason, develop the trade between the Great West and the Seaboard. The Dominion was given charge by the British North America Act of the regulation of trade and commerce, of public harbours and of shipping.

The Great West at that time included Ontario and the territory west of Ontario. The only seaboard was the seaboard in the Maritime Provinces. There was no seaboard at Montreal. It was afterwards created as an artificial port. The improvements for the development of the trade must necessarily involve freight rates which would make it reasonably possible to develop the trade, and the creation of port facilities and shipping connections and ocean rates in order that shipments might not be congested but could be moved outwards and inwards at the seaboard during all seasons of the year. There could be no proper trade development at summer ports only.

That the above is the construction which all the parties then placed upon the contract is shown by the pronouncements

which had been made by members of the Government of Upper and Lower Canada prior to Confederation and by the conduct of the parties to the agreement after Confederation. The Dominion did construct the Intercolonial Railway and provide for a long period a scale of freight rates, not based upon commercial considerations, but which could only be attributable to the contract for the development of the trade above mentioned. The Dominion also, from time to time, made certain attempts toward establishment of port facilities and made certain gestures evidencing an intention to carry out the terms of the contract. These gestures were made in part by means of statutes, enacted by Parliament respecting the ports at Saint John and Halifax, providing for commissions with the apparent object of creating the necessary port facilities in furtherance of the terms of the agreement. These gestures, although not followed up by substantial works, could only be attributable to the contract.

The Maritime Freight Rates Act of 1927, hereinafter referred to was an apparent attempt in part to put a stop to the injustice which had been caused to the Maritime Provinces by the imposition of unwarranted freight rates on the Intercolonial. This provision was most inadequate, even when it was made, but since 1927, certain alterations were introduced in the freight rates structure, as affecting the central provinces, which practically destroyed any benefit that the Maritime Provinces might have had from the reductions in freight rates made under the Act in Interprovincial trade.

On the basis of what was put forward as being necessary, low competitive rates, so-called, were brought into effect to apply between certain points in Ontario and Quebec, and these rates operated to nullify the effect of the Freight Rates Act in respect to shipments to and from the Maritime Provinces, involving the carriage of freight over the lines subject to such rates. The railways have refused to permit the Maritime Provinces to participate in the reductions made by these competitive rates.

Apart from the construction placed upon the terms of the contract as above mentioned, it seems clear that, from the wording of the contract itself, no other meaning can be attributed except that the improvements mentioned involved, not only the building and the proper operation of the Intercolonial Railway but the construction of such port facilities and shipping connections as would move the freight from the Great West to the

Seaboard and from the Seaboard to the Great West and other points.

The Maritime Provinces, by reason of the partial implementation of the terms of the agreement were, for a long time, persuaded that there was an intention on the part of the Dominion to perform its obligations and were lulled into a sense of security.

That the Dominion has not fulfilled its obligations is a matter of common knowledge.

The hundreds of millions of dollars which the Dominion has expended upon the creation of artificial ports on the St. Lawrence River, in the development of the canals and the acquisition of port facilities in the United States show conclusively that soon after Confederation the finances of the Dominion would have permitted the construction of the improvements required by the contract.

It has built the railway and for a time operated it upon reasonable freight considerations but it has not made any substantial attempt to fulfill the other conditions. It has not established adequate port facilities and shipping connections at any of the ports in the Maritime Provinces to meet the conditions of the agreement of Union.

The statement by the Honourable G. H. Ferguson, then Prime Minister of Ontario to the Prime Minister of Canada dated September 10th, 1930, published in the *Globe*, Toronto, September 20th, 1930 is as follows:

“When the Dominion came into existence it assumed all the obligations and the conditions that had been accepted on its behalf by its sponsors. Provinces which were subsequently attached to the Dominion were established at its instance under the provisions of the B. N. A. Act, and occupied the same relations towards the federated authority.”

It has been suggested that the provinces had no authority to make treaties; that the delegates to the London Conference were not authorized to make an agreement and that the people of the provinces should have been consulted.

The agreement was not a treaty, although in some of the speeches hereinafter quoted it was described as being in the

nature of a treaty. The Imperial Act itself is conclusive that the several provinces had authority to make the contract when it says that the provinces had agreed. The provinces could not have agreed unless the power was there and it is not open to the Dominion now to question the truth of the statements made in the statute by which the Dominion was created.

The same answer applies to the question as to whether or not the delegates to London were authorized to make the agreement.

The objection that the people should have been consulted is well answered by Lord Monck in the Debates of 1867 in the House of Lords, at page 579 when he said:—

“Now he believed that the expression of opinion which had come from Nova Scotia to this country had been entirely got up by a few energetic individuals; but the **Legislature of Nova Scotia** had, like the Legislatures of the other provinces, adopted by large majorities the Resolutions proposed to them, and had sent their delegates to this country to take part in the framing of the measure which had been laid on the table. The demands of those gentlemen in Nova Scotia, if they amounted to anything, meant that the question should be subjected to the decision of the people, instead of its being determined by the people’s representatives. Such a demand, to his mind, betrayed a great ignorance, not only of the principles of the British Constitution but of the principles upon which all representative institutions were founded. It was, perhaps unnecessary to remind their Lordships that in the earliest period of self-government every man was accustomed to give his opinion on matters on which a decision had to be arrived. But with the increase of communities such a thing became practically impossible. By-and-by, when the expedient of popular elections was adopted, the general body of the people had nothing to do with the management of their affairs beyond the selecting men in whose intelligence, integrity, and judgment they could place reliance to do their business for them. But they were not dealing with representative government in the abstract; they were acting under the British Constitution, which provided no machinery for testing the opinions of the country upon a measure. Responsible Ministers would scarcely recommend the Crown, for instance, to dissolve the House of Commons when the three Estates of the realm were in har-

mony. They would have, he believed, no right to look to any further expression of opinion. Therefore, he did not think that those gentlemen had any right to dispute the decision of the constitutionally appointed Legislature, but that, as the Legislature had decided in favour of the Union, they were bound to accept their decision as final."

Lord Carnarvon, in the Debates above referred to at page 571 stated as follows:—

"I have now come to the last, but also the gravest, objection which has been raised. It is an objection which I cannot indeed admit, but to which I will endeavour to do justice. It is represented that this measure, which purports to rest upon the free consent of the various contracting parties, is distasteful to a large portion, if not a majority, of the inhabitants of Nova Scotia. My Lords, it has been the duty of Her Majesty's Government to weigh seriously the value of this objection. I am told that a petition will be presented in the House of Commons; but none has been laid, or, as far as I know, will be laid on the table of this House. There are, however, petitions against this union, which will be found in the recent papers that have been presented to Parliament. They are often drawn up with considerable ability; but they bear the mark, I think, of a single hand, and though they profess to emanate from public meetings in the different counties of Nova Scotia, they are—I believe, with one exception—signed by the Chairman alone, and give no evidence of the number or class of the petitioners. As against this, we have to consider, first, that both Upper and Lower Canada have—I may almost say unanimously—expressed their concurrence in the proposed Confederation; and that New Brunswick has given in her formal adhesion. And what as to Nova Scotia? Why, in 1861, the Assembly of that Province agreed to a resolution in favour of Confederation in general terms, and that resolution was transmitted to the Home Government. In 1863 the Nova Scotia Legislature was dissolved, and the Parliament then returned is still in existence. That Parliament, last summer, agreed to a vote in favour of Confederation in most definite and yet comprehensive terms, empowering the delegates now in this country to negotiate with Her Majesty's Government the conditions of Union. My Lords I do not see how it is possible to look behind that vote, and what better guarantee we can have of the real feelings of the people of Nova Scotia. I

cannot, after this, consent to enter upon a discussion of the motives or policy of this or that Colonial Minister. We have not the materials for forming a judgment; we can only accept the deliberate and formal opinion of the legislature as the expression of the public feeling. **Nor are the delegates, who are now in England, men selected from any one party in the Province. They represent both the Colonial Government and the Colonial Opposition."**

THE TERMS OF THE AGREEMENT

The particular portions of the contract of Confederation most material to the consideration of our submission are as follows:—

Resolution No. 65.

"The construction of the Intercolonial Railway being essential to the consolidation of the Union of British North America, and to the assent of the Maritime Provinces thereto, it is agreed that provision be made for its immediate construction by the General Government, and that the Imperial guarantee for £3,000,000 sterling pledged for this work be applied thereto, so soon as the necessary authority has been obtained from the Imperial parliament".

No. 66.

"The communication with the North-Western Territory, and the improvements required for the development of the trade of the great west with the Seaboard, are regarded by this Conference as subjects of the highest importance to the Confederation, and shall be prosecuted at the earliest possible period that the state of the finances will permit."

No. 67.

"The sanction of the Imperial Parliament shall be sought for the Union of the Provinces on the principles adopted by this Conference."

No. 68.

"That Her Majesty the Queen be solicited to determine the rank and name of the Confederation."

No. 69.

"That a copy of these resolutions, signed by the

Chairman and Secretary of the Conference, be transmitted to the Right Honourable the Secretary of State for the Colonies”.

We submit that the terms of these Resolutions are sufficiently clear in themselves and that the improvements contemplated involved *inter alia* the establishment of harbour facilities and shipping connections at the ports of the Maritime Provinces and proper operation of the railway. The meaning will be abundantly plain when we take into account the pronouncements which were made by members of the Government of Canada prior to Confederation.

Sir E. P. Tache, Premier, Receiver General and Minister of Militia, in the Debates of the Legislature of Canada 1865, as reported on page 6, said:

“Our railway system too, in proportion to our means and population was as extensive as could be found anywhere else; yet with all these advantages, natural and acquired, he was bound to say we could not become a great nation. We laboured under a drawback or disadvantage which would effectually prevent that, and he would defy anyone to take a map of the world and point to any great nation which had not sea-ports of its own open at all times of the year. Canada did not possess those advantages, but was shut up in a prison, as it were, for five months of the year in fields of ice, which all the steam engineering apparatus of human ingenuity could not overcome, and so long as this state of things continued, we must consent to be a small people, who could, at any moment, be assailed and invaded by a people better situated in that respect than we were”.

At page 7:—

“For his part he held that the time had now arrived when we should establish a Union with the Great Gulf Provinces. He called them great advisably, for they had within themselves many of the elements which went to constitute greatness, and of some of which we were destitute. Canada was unquestionably wanting in several of these important elements.”

Nothing further should be required in order to indicate the intention of the framers of the Confederation agreement.

The words in boldface imply conclusively that it was the intention to create **national sea-ports** in the Maritime Provinces open at all times of the year. It is noted that they were to be the **ports of the nation**.

The Honourable John A. Macdonald, then Attorney General, West, of Canada, at page 18 of the Report of 1865, said:

“As regarded the Intercolonial Railroad the resolutions shewed precisely what was the intention of the Government in that matter. The railroad was not, as stated by the Honourable Mr. Holton, a portion of the Constitution, but was **one of the conditions on which the Lower Provinces** agreed to enter into the constitutional agreement with us.”

The resolution shewed precisely the intention in respect of the railway. Both the resolutions adopted at Quebec and those adopted in the London Agreement shew the intention. Mr Macdonald said that the construction of the railroad was **one of the conditions**. This implies that there were other conditions.

We have a right to presume that there will be no objection urged on behalf of the Dominion or any province against the full and complete implementation of the real agreement at Confederation, when once the intention of those who made the agreement has been ascertained.

The Honourable George E. Cartier, Attorney General East and one of the delegates to the London Conference said at page 55:—

“He had stated before audiences in the Lower Provinces that, as far as territory, population and wealth were concerned, Canada was stronger than any of the other Provinces but at the same time was wanting in one element necessary to national greatness—the Maritime one; and that, owing to the large trade and commerce of Canada **extensive communication with Great Britain at all seasons was absolutely necessary**. Twenty years ago our commerce for the year could be managed by communication with Great Britain in the summer months only. At present, however, this system was insufficient, and for winter communication with the sea-board we were left to the caprice of our American neighbors, through whose territory we must pass. He had also alluded to the bonding system, which if the Americans

were to withdraw, Canada would be left in winter without any winter harbours. Canada, having two of three elements of national greatness, territory and population—wanted the Maritime element; and he had said—the **Lower Provinces** had this element and a seaboard, but not a back country or large population, which Canada possessed—and for the mutual benefit and prosperity of all the **Provinces**, all these elements ought to be united together”.

He admits statements made in the lower provinces that Canada was wanting in one element to national greatness—the Maritime one, and that extensive communication with Great Britain at all seasons was absolutely necessary. There could not be such communication in Canada without utilizing the ports of the Maritime Provinces. They were, and are, the only ports which would afford such communication at all seasons.

The intention is so plain that it should not require argument. It is difficult to understand that New Brunswick entered the Confederation except upon an absolute reliance on the Confederation agreement, that its ports would be made to serve the commerce of Canada as national ports. No doubt our people had the vision of a great prosperity to be brought about by the shipment of the products of the Great West wholly through British territory, the import trade of Canada, the interprovincial trade; the establishment of industries which would result from the Confederation of the provinces. But one of the strongest statements was made by the Honourable A. T. Galt, Minister of Finance, and one of the delegates to London, when he said at page 63:—

“We may well look forward to our future with hopeful anticipation of seeing the realization not merely of what we have hitherto thought would be the commerce of Canada, great as that might become, but to the possession of **Atlantic ports**, which we shall help to build to a position equal to that of the chief cities of the **American Union**.”

And on page 65:—

“Through these canals and the River St. Lawrence and along the railway systems of all the provinces, when hereafter connected, a great trade will flow in one uninterrupted stream, enriching in its course not only the cities of Canada, but also swelling the tide of a new commerce we

may hope to see called into being in the open Atlantic ports of Saint John and Halifax."

The Honourable George Brown, President of the Executive Council, at page 103:—

"And this question of immigration naturally brings me to the great subject of the North West Territories. The resolutions before us recognize the immediate necessity of those great territories being brought within the Confederation and opened up for settlement. But I am told that, while the Intercolonial Railroad has been made an absolute condition of the compact, the opening up of the Great West and the enlargement of our canals have been left in doubt. Now, Sir, nothing can be more unjust than this. Let me read the resolutions:—'The General Government shall secure, without delay, the completion of the Intercolonial Railway from River du Loup through New Brunswick to Truro in Nova Scotia. The communications with the North West Territory, and the improvements required for the development of the trade of the Great West with the Seaboard, are regarded by this Conference as subjects of the highest importance to the federated provinces, and shall be prosecuted at the earliest possible period that the state of the finances will permit.' The Confederation is, therefore, clearly committed to the carrying out of both these enterprises. I doubt if there was a member of the Conference who did not consider that the opening up of the North West and the improvement of our canal system were not as clearly for the advantage of the Lower Provinces as for the interests of Upper Canada."

"——Honourable Gentlemen opposite must not imagine that they have to do with a set of tricksters in the thirty-three gentlemen who composed that Conference."

"What we have said in our resolutions was deliberately adopted in the honest sense of the words employed and not for purposes of deception. **Both works are to go on at the earliest possible moment our finances will permit.** And Honourable Gentlemen will find the Members of the Cabinet from Lower as well as from Upper Canada, actuated by the hearty desire to have this whole scheme carried out in its fair meaning."

At page 107:—

“I am in favour of this union because it will give us a seaboard at all seasons of the year. It is not to be denied that the position of Canada, shut off as she is from the seaboard during the winter months, is far from satisfactory—and should the United States carry out their insane threat of abolishing the bonding system, by which our merchandise passes free through their territory, it would be still more embarrassing. The Maritime Provinces are equally cut off from communication inland. Now this embarrassment will be ended by colonial union. The Intercolonial Railway will give us at all times access to the Atlantic through British territory.”

And at page 108:—

“The advantage it will confer on the Maritime Provinces can hardly be over-rated. It will make Halifax and Saint John the Atlantic seaports of half a continent; it will insure to Halifax, ere long, the establishment of a line of powerful steamers running in six days from her wharves to some near point on the West coast of Ireland — and it will bring a constant stream of passengers and immigrants through those Lower Provinces that never otherwise would come near them.”

Messrs. Macdonald, Cartier and Galt afterwards became members of the Dominion Cabinet and Sir John A. Macdonald practically controlled Parliament from Confederation up to the time of his death in 1891, except during the years 1873 to 1878.

Although the Dominion recognized its responsibility in respect to the agreement of Confederation by legislation, by the statements in Parliament made from time to time by responsible Ministers of the Crown and by legislative enactments with respect to the Intercolonial Railway, the ports of the Maritime Provinces and the carriage of export commodities over Canadian railways, as hereinafter more particularly described, it seemed gradually to lose sight of the principles upon which Confederation was established.

The provinces, being sovereign and independent nations under the British Crown, jointly and unanimously arranged with the Imperial Government to provide an agency by means of

which certain matters of common interest were to be dealt with. The agency was created by the provinces and the provinces were not created by the agency. The provinces remained sovereign nations and the British North America Act did not effect any change in their status. They are still independent sovereignties and the Dominion is still the agency through which certain matters are to be administered. This has been more particularly demonstrated by the decisions of the Judicial Committee of the Privy Council.

The Dominion Parliament has declared by legislative enactment that there were "obligations" undertaken at Confederation; that once the true intention of those provinces which entered into the Union was ascertained, the intention should be carried out; that the Dominion was the proper authority to carry it out and that in the discovery of such intention a Commission should be governed, amongst other things, by a study of the events and pronouncements prior to Confederation and at its consummation, and the obligations undertaken by the several parties.

This legislative declaration is contained in the preamble to the Maritime Freight Rates Act of 1926-1927, chapter 44, which is as follows:—

"WHEREAS the Royal Commission on Maritime claims by its report, dated September 23rd, 1926, has, in effect, advised that a balanced study of the events and pronouncements prior to Confederation, and at its consummation, and of the lower level of rates which prevailed on the Intercolonial system prior to 1912, has in its opinion, confirmed the representations submitted to the Commission on behalf of the Maritime Provinces, namely that the Intercolonial Railway was designed, among other things, to give to Canada in times of national and imperial need, an outlet and inlet on the Atlantic Ocean, and to afford to Maritime merchants, traders and manufacturers the larger market of the whole Canadian people instead of the restricted market of the Maritimes themselves, also that strategic considerations determined a longer route than was actually necessary, and therefore that to the extent that commercial considerations were subordinated to national, imperial and strategic conditions the cost of the railway should be borne by the Dominion, and not by the traffic which might pass over the line; and whereas the Commission has, in such re-

port, made certain recommendations respecting transportation and freight rates, for the purpose of removing a burden imposed upon the trade and commerce of such provinces since 1912, which, the Commission finds, in view of the pronouncements and obligations undertaken at Confederation, it was never intended such commerce should bear; and whereas it is expedient that effect should be given to such recommendations, in-so-far as it is reasonably possible so to do without disturbing unduly the general rate structure in Canada”.

In the Act itself it is stated that the preamble indicated the purpose and scope of the statute.

The above enactment is conclusive against the Dominion.

It was not merely a statement by a Minister of the Crown or even a pronouncement by Order-in-Council, but it was a deliberate declaration by the Parliament of Canada that involved an admission of liability.

In view of that solemn and formal acknowledgment it is not open now to the Dominion to say that it is not bound to carry out the intention of the provinces in entering the union.

That the question was not dealt with by the Duncan Commission or by the White Commission is indicated by the record.

At page 23 of the report of the Duncan Commission is the following:—

“Considerations such as attach only to individual claims, or to the general question as to whether or not railway companies should give better treatment than they are giving to long-distance traffic, particularly on natural products and associated enterprise, and to export and import rates from and to points outside the Maritime area passing through Atlantic ports, are still open for review by the Railway Commission.”

The Duncan Commission did deal with the question of freight rates on the Intercolonial Railway. It recommended a reduction of 20% in order that the general set up would be in line with the freight structure in the rest of the Dominion, but

it made no attempt to deal with the conditions surrounding the development of the trade between the Great West and the Seaboard or other features of the Confederation Compact.

As to these matters the reference in the report is contained at page 28 as follows:—

“Very considerable evidence was laid before us on behalf of the Maritime Provinces, to show that in the public pronouncements of responsible Ministers over a long period of time, and indeed in the statutory obligations under which railway companies operate, there is to be found the most explicit pledge that Canadian trade will be developed through Canadian ports, and yet, in spite of that pledge, ports such as Halifax and Saint John are, it is stated, not being fully utilized. This is a subject on which, in its more general aspects, we are not called upon to form a view, or express an opinion, especially since the Terms of Reference made to the Board of Railway Commissioners under Order-in-Council dated January 7, 1926, they are specifically required to inquire into the causes of Canadian grain and other products being routed or diverted to other than Canadian ports and to take such effective action under the Railway Act, 1919, as the Board may deem necessary to ensure, as far as possible, the routing of Canadian grain and other products through Canadian ports.”

It will be quite apparent from the above quotation that the question we are now advancing, that is to say, the non-fulfillment by the Dominion of the provision in the agreement of Confederation providing that “the improvements required for the development of the trade between the Great West and the Seaboard shall be prosecuted at the earliest period that the finances will permit”, was not considered or decided by the Duncan Commission. That Commission said that it was not quite open to express an opinion with reference to matters which are necessarily a part of the agreement above mentioned.

The Duncan Commission also made a recommendation that an interim payment of \$600,000 per year be made to New Brunswick in respect of financial arrangements between the Dominion and the Maritime Provinces and said:—

“It is not possible, therefore, to make a final recommendation as to the increase and form of Dominion aid

which is required to satisfy the just claims of the Maritime situation, but we recommend that the Dominion Government should give immediate consideration to the whole of this subject, with a view to a complete revision of the financial arrangements as between them and the Maritime Provinces."

The authority of the White Commission was strictly circumscribed. In the Order-in-Council, after referring to the Duncan Commission there is the statement:—

"And whereas the said Commission made certain recommendations with regard to the readjustment of the financial arrangements between the Government of the Dominion and the Governments of the three Maritime Provinces."

"And Whereas in a letter dated the 16th day of January, 1934, addressed to the Prime Minister of Canada by the Premiers of the Maritime Provinces it was suggested that a Commission be set up to take into consideration and deal with the recommendation of the Duncan Commission that there be a revision of the financial arrangements between the Dominion Government and the Maritime Provinces."

"And Whereas pursuant to the provisions of the said the Inquiries Act, His Excellency the Governor General in Council by Order, P. C. 2231, of the fourteenth day of September in the year of Our Lord, one thousand nine hundred and thirty-four, copy of which is hereto annexed, has authorized the appointment of Our Commissioners therein and hereinafter named to take into consideration and deal with the recommendation of the said Duncan Commission that there be a revision of the financial arrangements between the Dominion Government and the Maritime Provinces."

It will be seen from the above that the authority of the White Commission was limited to the consideration of a revision of the financial arrangements.

The White Commission did not attempt to make any recommendations or findings in reference to the obligations contained in the Confederation agreement that "the improvements required for the development of the trade between the Great West and the Seaboard should be prosecuted at the earliest possible period when the state of finances will permit," or in

possible period when the state of finances will permit," or in fact in respect to any of the claims of New Brunswick, other than those involving a consideration of the financial arrangements.

This is recognized by the White Commission in its report at page 19.

After referring to the Duncan report it is stated:—

"This statement by the Duncan Commission had reference to the whole range of matters forming the subject matter of their inquiry which embraced not only the question of financial arrangements dealt with in the first section of their report but such additional and vitally important subjects as the freight rate structure of the Intercolonial Railway and its effect upon the Maritime Provinces, the policy of the Dominion Railway Commission, transportation for Prince Edward Island, port development and export trade, harbour commissions for Halifax and Saint John, harbour facilities in Prince Edward Island, trade policy as to forest produce, fisheries, coal and steel, the customs tariff and bounties, agriculture and immigration, New Brunswick railways, trade development generally, fisheries organizations, tourist traffic, technical education and many other topics of economic importance. These are the main factors to be considered by the Dominion Government and Parliament in seeking to carry out the recommendations of the Duncan Commission with the object of assuring 'a better balance of territorial prosperity for the Maritime Provinces' because it is only by the development of natural resources through the application of capital, industry and technical skill and of trade through the establishment of adequate facilities for the profitable marketing of products, that prosperity can be attained. These larger and more important aspects of the subject were dealt with comprehensively by the Duncan Commission and do not expressly fall within the scope of our inquiry. We are concerned only with the matter of revision of financial arrangements. The broad economic problems of the Maritimes like those of the other provinces are for the Government and Parliament to consider and deal with. Increase of money grants to individual provinces will not alone bring about prosperous conditions within their areas although it may indirectly assist by promoting, through educational and public welfare services,

economic efficiency or by reducing taxation within the province and thus lessening the burden upon trade and industry."

It is therefore clear that the contentions we are now making have never been considered or acted upon by another Commission and the field is still open to this Province in the submission of its claim under this Part.

Our submission is that the present Commission, under its authority whereby it is required to conduct a re-examination of the economic and financial basis of Confederation is empowered to deal with the question raised by us in this Part.

It was laid down in the House of Commons by Sir Wilfred Laurier, in 1907, as reported in Hansard, page 5308 that there is no finality in respect of subsidies to the provinces. He said:—

"My honourable friend (George E. Foster) knows as well as I do that there is no other guarantee but the determination of Parliament itself. Under the American constitution no amendment can be made unless it has been voted and ratified by three-fourths of the States. We have no such provision in our constitution; the only guarantee we have is the security of the Imperial Parliament, and it will always be difficult for us to go to England and get an amendment to our constitution. Forty years have now elapsed since our constitutional charter was amended. It is true that we have been doing like the Romans, who, though they had the law of the twelve tables, which could not be altered, still managed to circumvent that law by enacting other laws. We might do the same thing. But the only guarantee we have is this—that my honourable friend representing one party, and myself representing another party, and the members of Parliament generally, will agree that this is to be final. Parliament will not defeat its own intentions, and Parliament can always do as it pleases, and the honourable gentleman knows that there is no other finality in all these matters but the will of the people, the will of Parliament itself."

The Honourable W. S. Fielding, then Minister of Finance, stated on the same occasion that nothing could be done which would prevent a further grant being made from the Dominion to the provinces.

And it was in view of these declarations that the Province accepted the cheques covering the amounts recommended by the Duncan and White Commissions.

PARTIAL PERFORMANCE OF THE AGREEMENT

As already indicated the Dominion did partially perform its obligations in respect to the building of the railway and the operation thereof up to the year 1912.

In reference to the agreement that it should be the duty of the Dominion to provide the improvements required in the development of the trade between the Great West and the Seaboard there was about the year 1876 a spur railway constructed in Saint John from a connection with the Intercolonial Railway down along the harbour at Courtenay Bay, and a wharf built.

In 1882 (see Act of the Dominion of that year, ch. 51) a statute was passed with reference to the harbour of Saint John by which the Governor-in-Council of the Dominion was authorized to appoint three Commissioners, the Common Council of Saint John City and the Council of the Board of Trade one Commissioner each, and the Commissioners were to have power to purchase the harbour property from the City, also other wharf property. "And for the extension and improvement of such harbour" the Governor-in-Council was empowered to raise \$750,000 as a loan for those other improvements when sanctioned by the Minister of Public Works; and powers of expropriation were given to the Commissioners.

This statute was to come into force by proclamation. It was never brought into force and nothing was ever done under it. But it indicates that the Dominion Parliament quite realized its responsibilities in connection with the improvements to the Harbour of Saint John. The statute was repealed in 1919 (chapter 70) and it was again repealed in 1927. (ch. 67).

Some time about the year 1898 the Dominion made further improvements in the harbour at Saint John by constructing an elevator and continuing the spur down on the eastern side of the harbour to connect with the spur built in 1876.

In 1919 an Act was passed by Parliament (chapter 70) in which the earlier Act was referred to, reciting that the City of Saint John had agreed to transfer its rights to His Majesty. The statute provided for the appointment of Harbour Commissioners to define the boundaries of the harbour and fixed the consideration to be paid at the sum of \$2,000,000.

The Act respecting the construction of the National Transcontinental Railway (1903, chapter 71) passed on the 24th of October, 1903, confirmed the agreement between His Majesty the King and the Grand Trunk Pacific Railway Company with respect to the building and operation of the National Transcontinental Railway.

In this agreement by paragraphs 42, 43 and 45 it is provided as follows:

“42. It is hereby declared and agreed between the parties to this agreement that the aid herein provided for is granted by the Government of Canada for the express purpose of encouraging the development of Canadian trade and the transportation of goods through Canadian channels. The Company accepts the aid on these conditions, and agrees that all freight originating on the line of the railway, or its branches, not specifically routed otherwise by the shipper, shall, when destined for points in Canada, be carried entirely on Canadian territory, or between Canadian inland ports, and that the through rate on export traffic from the point of origin to the point of destination shall at no time be greater via Canadian ports than via United States ports, and that all such traffic, not specifically routed otherwise by the shipper, shall be carried to Canadian ocean ports.”

“43. The Company further agrees that it shall not, in any matter within its power, directly or indirectly advise or encourage the transportation of such freight by routes other than those above provided, but shall, in all respects, in good faith, use its utmost endeavours to fulfil the conditions upon which public aid is granted, namely,—the development of trade through Canadian channels and Canadian ocean ports”.

“45. The Company shall arrange for and provide, either by purchase, charter or otherwise, shipping connections upon both the Atlantic and Pacific oceans sufficient in

tonnage and in number of sailings to take care of and transport all its traffic, both inward and outward, at such ocean ports within Canada, upon the said line of railway or upon the line of the Intercolonial Railway, as may be agreed upon from time to time, and the Company shall not divert, or, so far as it can lawfully prevent, permit to be diverted, to ports outside of Canada any traffic which it can lawfully influence or control, upon the ground that there is not a sufficient amount of shipping to transport such traffic from or to such Canadian ocean ports."

Similar provisions were made in legislation respecting the Canadian Northern Railway.

There were repeated declarations in the Dominion Parliament by Sir Wilfred Laurier and Honourable Mr. Fielding that the policy of the Government was to have the freight routed, so far as possible, through Canadian ports.

On January 7th, 1926, the Dominion Government passed an Order-in-Council calling on the Railway Commissioners to enquire into the shipment of Canadian freight through Canadian ports, with instructions to take steps under the Railway Act as might be necessary to have freight forwarded through Canadian ports.

The position of New Brunswick is that some recognition was paid to the obligations of the compact by the Dominion Government, in the construction of the Intercolonial Railway and the fairly reasonable operation thereof on a service basis for many years; but that there was no proper attempt made to fulfill other conditions of the contract.

The Dominion Government has recently recognized the Confederation agreement by removing from the indebtedness which had been allocated to the Canadian National Railway that part thereof incurred by the Dominion in respect to the construction of the Intercolonial Railway. This item is now added to the public debt account of Canada. There was never any justification for including the item in the debt applicable to the Canadian National Railway System. This act of the Dominion shows conclusively that the Canadian National Railways are not expected or required to impose any freight rates on the Intercolonial Railway system designed to provide the interest on the cost of construction. Our submission is that, even if the operat-

ing expenses involve freight rates which bear too heavily upon the interprovincial and other trade of the Maritime Provinces, the rates should be reduced to an amount which would fairly encourage such trade and make it possible.

It may be also stated here that, in making comparisons in respect of capital expenditures by the Dominion in the several provinces, it must be borne in mind that the cost of the Intercolonial Railway is not to be considered as chargeable in any sense as an expenditure in the Maritime Provinces. The cost of the railway is an essential part of the scheme of Confederation.

It will be noted that under Resolutions 65 and 66 it was provided that the Government was to furnish improvements which were required in the development of the trade between the Great West and the Seaboard and that the work of such improvements should be prosecuted as soon as the state of the finances would permit.

The whole scheme was to keep the traffic within Canada. The Intercolonial was located with this object in view. The Maritime Provinces had the only seaboard and it was to that seaboard that the resolutions referred.

There could be no trade between the Great West and the Seaboard unless it involved shipment abroad and imports brought into Canada throughout the whole year.

Public harbours, the regulation of trade and commerce and shipping were passed into the jurisdiction of the Dominion.

It is therefore submitted that it was the duty of the Dominion to make improvements in harbour facilities, shipping connections and overseas freight rates so that there might be a continuous development of the trade between the Great West and the Seaboard.

This partial performance of the agreement of Confederation must be deemed a recognition by the Dominion Parliament of its obligations under the agreement, an acceptance of its terms, and a conclusive admission of the agreement as we allege it to be, and the Dominion by reason of its conduct is now estopped from setting up any objection to the construction it placed upon the agreement or its liability to perform the conditions imposed upon it.

In the report of the Duncan Commission at page 21 it is stated:—

“The lower level of rates that prevailed on the Inter-colonial Railway system prior to 1912 is, in our view, rightly to be interpreted as the fulfillment by successive governments of the policy and pledges that surrounded the Railway from its inception, whatever impressions may have been created by the form of its administration.”

PROTESTS

There have been many protests made, from time to time, by New Brunswick and by the other Maritime Provinces to the Dominion in reference to the nonfulfillment of the terms of Confederation. The last protest was made on the 13th of August, 1936, directly by communication from His Honour the Lieutenant Governor of New Brunswick to His Excellency the Governor General of Canada, and in which was contained a copy of an Order-in-Council passed by the Government of the Province and a resolution of the Legislative Assembly demanding fulfillment of the obligations resting upon the Dominion.

NON-FULFILLMENT OF THE OBLIGATIONS

If we take a broad view of the conditions at the time, we can understand the picture that was presented to the people of the Maritime Provinces. Here were provinces locked up for one-half the year without a seaboard, at the mercy of the United States for an outlet. There was internal dissension and financial problems so that some change in the political situation was imperative. They conceived the idea of a union in order to become independent of the United States. Even at that time there was every prospect of developing a tremendous grain yield in the West. The people of the Maritime Provinces were persuaded that interprovincial trade would be developed and that traffic would be carried through their ports with facilities provided by the Dominion. They entered into Confederation upon that understanding.

But the Dominion, although it had operated the Inter-colonial Railway until the early part of this century somewhat in accordance with the spirit of the Confederation agreement and then abandoned that spirit altogether, and did on certain occasions attempt to make improvements in order to develop the trade between the Great West and the Seaboard, did not adequately provide such improvements. It did not build up national harbours at Saint John and Halifax. It did not discontinue the traffic to the American ports or to try to do so. They had obtained Confederation. They could say to the United States: "We are independent now; we have a seaboard open all the year round." That seemed to satisfy the politicians. The Dominion even made investments amounting to 156 millions of dollars in railway transportation and harbour facilities in the United States and assumed an indirect liability of many millions more.

We regard this expenditure in a foreign country as entirely beyond the powers of the Dominion Government.

Many millions of dollars were expended by the Dominion in order to create an artificial port at Montreal and to maintain traffic to and through other artificial ports on the St. Lawrence. Millions are being spent for the dredging of that river and in ice-breaking so that shipping can be artificially extended into the winter months at the expense of the Maritime Provinces. If a reasonable development of the Maritime ports had been made as agreed there would have been some justification for development elsewhere, but when the Maritime ports were practically forgotten this Province has a right to complain. These expenditures on the St. Lawrence and the expenditures on the canals, supplemented by the expenditures in the United States, indicate conclusively that money was available "for the prosecution of the improvements required for the development of the trade from the Great West to the Seaboard".

There is in prospect now an enormous expenditure estimated at \$100,000,000 in order that a channel may be maintained in the St. Lawrence River to Montreal. Through the diversion of the waters of the Great Lakes by the United States the level of the lakes has been reduced from 4 to 8 feet already and there seems to be a continuous falling drop in the level.

The Dominion has also expended some fifty millions on the Hudson Bay development which is an impossible economic proposition.

All this is in line with the attitude always adopted for the purpose, apparently, of diverting the traffic to ports other than those of the Maritime Provinces.

Canada has paid the United States hundreds of millions of dollars for transportation services more than it has received from the United States. It has contributed a huge amount through New York stock exchange and other exchanges in the Republic. The trade balance against Canada with the United States has been enormous and Canada and the Empire have suffered primarily from the fact that the basic condition of Confederation has been disregarded. There has been imposed upon New Brunswick transportation and cost of production handicaps which make it practically impossible for this Province to develop her trade, although, with the utmost determination, the Government of the Province is struggling for such development in the face of almost insurmountable handicaps.

It was more particularly in 1888 that a well defined act on the part of the Dominion indicated that it was not the intention to pay regard to the substantial development of the Maritime ports. By chapters 5 and 6 of the Acts of the Dominion in that year provision was made for the assumption by the Dominion of the debts of the harbour commissioners of Montreal and Quebec and for the widening and deepening of the channel in Lake St. Peter and in the St. Lawrence from Montreal to Quebec.

Our complaint is that the Dominion has persistently ignored the rights of the Maritime Provinces. Montreal was not, and is not now, an ocean port. The only ports at the seaboard were ports in the Maritime Provinces.

It is contended by many that the grain shipments from the West are routed by the shipper and that the railways have no discretion in the matter; that even if there were a fixed policy on the part of the railways to ship the grain through Maritime ports, it would be impossible for them to divert these shipments from the channels named by those who ship grain or those who control the shipment of the grain.

It is not our intention to consider this proposition.

We rely upon the design of Confederation by which the obligation was upon the Dominion "to make such improvements

as were required in the development of the trade between the Great West and the Seaboard and to prosecute such improvements at the earliest period when the finances of the Dominion would permit."

We do not look to the railways for the performance of this stipulation. We look to the Dominion, and we say that it was perfectly feasible for the Dominion to cause the substantial part of the grain to be shipped to the East through British territory to the ports of Saint John and Halifax. If this trade had been once established, as it should have been established in the early years of Confederation the question would have been solved. The shipment of the grain, the development of the ports, the provision as to shipping connections and the proper operation of the Inter-colonial Railway would have brought to the Maritime Provinces imports into Canada and the ports of Saint John and Halifax would have been built up the same as the ports of the leading cities of the United States.

As an example of what might have been done we refer to the present conditions where, by reason of Imperial Regulation designed to keep British trade in British trade routes throughout the Empire, British commodities enjoy a preference when shipped through British ports; such regulation has been proved to be sufficient to divert the traffic largely to such ports. But the British regulation does not recognize the interprovincial agreement which requires the Dominion to route the traffic through Maritime ports. We also refer to the provision now made that imports into Canada enjoy a preference when entering through Canadian ports. The effect of this arrangement has been, not only to cause a substantial quantity of the grain to be shipped through Canadian ports, but also to bring to such ports a largely increased amount of the imports into Canada, but ports of the Maritime Provinces are not benefitting, relatively, by these arrangements.

Whether these same arrangements could have been made in the early days of Confederation may or may not be questionable, but the example only illustrates the measures that might have been taken for the development of this trade through Maritime ports.

Some arrangements might have been made by the Dominion and it was for the Dominion to provide that such arrangements should have been made. The burden was upon the

Dominion to fulfill the terms of the agreement. If, in order to do so, the railways needed encouragement or if the shippers needed concessions, it was the duty of the Dominion to provide that encouragement or such concessions.

That such an arrangement was possible is indicated by what was accomplished by the Canadian Pacific Railway Company. In 1895 that company commenced some development at the port of Saint John by which grain was to be shipped in the winter season. The Canadian Pacific Railway Company found the grain and, to the extent of its development, caused shipments to be made through the Port of Saint John. The Dominion neglected its obligations in that particular, made no successful effort to carry out the terms of the agreement and still permitted and encouraged the American ports to handle the grain from the West in an ever increasing quantity.

A statement made by the Railway Commissioners on September 27, 1927 (Vol. 17. No. 13. B. R. C. at page 281).

“As lake-and-rail gives greater certainty and speed of grain movement than lake-and-canal, so all-rail gives greater certainty and speed of grain movement over lake-and-rail. It is reasonable to assume that if grain were forwarded all-rail direct from the producing areas to Quebec at rates truly competitive with those to New York, the more prompt and certain delivery thereby made possible would tend to balance in some degree the advantages now enjoyed by New York and thus tend to swing so much of the Canadian traffic by the Canadian route. The fact that during the crop year 1925-26 over ten million bushels of wheat was moved eastward from the lake head by rail is evidence first that the long all-rail haul is practicable, and second that circumstances may be such as to make it profitable to shippers even at the present non-competitive rates.”

As above pointed out the shipment of grain in large quantities in the early days of Confederation would have built up the ports of Saint John and Halifax and shipping would have been attracted to those ports for the carriage of grain and for the delivery of imports into Canada. That has not been done and it may be more difficult now to accomplish that result. But even if it were more difficult, the duty is there on the part of the Dominion. The Dominion should have assumed the financial responsibility of making provisions in some form for the carry-

ing out of the Confederation agreement in that respect sixty years ago and when once the momentum was given to the trade the success of it would have been assured. It might cost the Dominion something to do that, but it frequently costs persons and corporations something to carry out their contracts.

What we submit is that such a condition would have been reasonably possible of accomplishment.

If the agreement of Confederation had been carried out in its entirety, not only would a great proportion of the traffic from the West be now carried through the Maritime ports but a much larger proportion of the import trade of Canada would have passed through those ports. The development of the trade, requiring not only the port facilities but also the shipping connections and ocean freight rates must necessarily have drawn to those ports in an ever increasing stream imports from abroad.

At the time of Confederation the Imperial Government was much concerned as to the location of the Intercolonial Railway and that success would follow the union of the provinces; it is not unreasonable to assume that the Government would have granted every encouragement possible to the development of the traffic by and through British territory. Importers of grain in Britain could easily have been persuaded to cause the grain to be shipped through British ports and the influence of the Imperial Government in that respect would have been a great factor in the accomplishment of this result. Canadian importers might also have had much influence in directing the importation of commodities through Maritime ports.

If the development which has been artificially created on the St. Lawrence had been fairly divided with Halifax and Saint John the national benefit which would have accrued would be enormous.

The first national freight rate structure established by the Federal Government provided freight rates which made it possible for our importers and shippers to compete in Ontario with Montreal importers and shippers. Plants were established in the Maritime Provinces at the Seaboard for the manufacture of tropical and semi-tropical raw materials, but many of these manufacturing industries were obliged to discontinue because of the constant and continuing burden placed upon the traffic from the Maritime Provinces.

The present operation of the Intercolonial Railway, under the supervision of the Board of Railway Commissioners, is a commercial operation which is entirely contrary to the scheme of Confederation.

In order that the design of Confederation may be carried out, it is necessary that the Intercolonial Railway operation have a local management at Moncton; that such management operate upon the principle of the encouragement of industries in the Province and of enabling the people of New Brunswick to market their commodities in competition with those of the other provinces; to obtain from those provinces the goods which must be had for consumption.

Sir Henry Thornton in giving evidence before the Commission headed by Sir Andrew Duncan, testified at Montreal on September 1st, 1927:

“Unfortunately as far as the Canadian National Railway itself is concerned there have been distinct limitations with respect to the assistance which they might provide. Whether I am right or wrong, others must say, but I have in sincerity conceived that the mandate, which I think Mr. Dalrymple touched upon as to the administration of the Canadian National Railway, was to endeavor to operate that system in such fashion as would as rapidly as possible reduce the financial burden on the people of Canada to supportable proportions, with the ultimate object in the near future of removing that burden altogether.”

“If that theory does not assure that measure of relief which the Maritime Provinces should have and which I personally feel they should have, then the burden should not rest exclusively on the National Railway system but should be met by some form of assistance, presumably federal assistance, which will be in an equitable way distributed over the whole of Canada.”

“I should like to interpose at this juncture another factor which, I think, creates a responsibility which rests on the rest of the Dominion of Canada. The Maritime Provinces possess the only all-round year ports on the Atlantic. I mean ports that are freely open for navigation the twelve months of the year. That, in my judgment, is an extremely important factor. It is inconceivable to my mind that the people of the

rest of Canada could contemplate isolation from the Atlantic seaboard during the winter time. Now, the ports are not at the moment enjoying the traffic which their strategic importance justifies."

"I think there can be little doubt that the people of the Maritimes, perhaps in the form of written documents, or perhaps by spoken word by responsible political leaders of that time, were assured of transportation services which in cost and character would enable them to market their products to the rest of Canada and carry on their industrial activities."

"That is precisely my position, Sir Andrew, whether it be right or wrong I again repeat that the responsibility of the administration of the Canadian National Railways is to try to operate all the parts of that railway in such fashion as will remove as rapidly as possible the financial burden which rests upon the people of Canada, and give to the people of Canada at the same time efficient transportation service as we can. If I am wrong, then if some responsible body will correct me we will proceed on some other basis."

It is not impossible to draw a picture of the conditions that might have prevailed in New Brunswick had the Confederation agreement been properly carried out by the Dominion. The condition would not be far removed from that stated by the Honourable Mr. Galt when he said that the Dominion would help to build up Atlantic ports to a position equal to that of the chief cities of the American Union. If that situation had been developed the Province of New Brunswick would today be in a very different position from what it is at present. Ports for the traffic that must have been available under these conditions would have given rise to the development of all kinds of industries in the Province. There would have been a market for our farm products close at hand. Manufacturers would have been encouraged. Our population would probably have reached more than a million souls.

We would have been able to retain many of our young people who have, since Confederation, been obliged to leave the Province to obtain a livelihood. The benefits would have been incalculable. The matter is not one for definite proof from figures but our submission is that this Province should be compensated in such a reasonable manner as may be determined upon from all the evidence.

The opinion of Sir Andrew Duncan is important in this connection. (See report of the Duncan Commission pages 29 and 30).

“We doubt whether it is sufficiently realized to what extent, in an unforeseen but inexorable way, enterprise within the three Maritime Provinces has been checked as a result of their maritime development not having kept abreast of the transformation which in the last half century has been taking place in sea transportation, not only as regards the character, size, and speed of shipping tonnage but also as regards the port requirements for handling it. Both in the nature of the basic products of the Maritime Provinces, and in the advantage which their Maritime location gave them access to the world markets was in former times their greatest asset. In ownership of tonnage, and in the service that tonnage rendered to them in transportation of commodities around their own regions, as well as for their overseas markets and return trade, they had a most valuable source of income, a source of income too which helped materially to maintain the balance of trade. Access to world markets is still, in many respects, more important to them for some of their natural products—though not for all— than access to internal Canadian markets. Events outside their control may have closed to them some overseas markets which were at one time available, or may have made these markets less profitable, but initiative and enterprise can supplement old markets with new so long as sea communication is maintained abreast of the times in equipment, facilities and organization.”

“It is not possible, within a short space of time, to make good the leeway which delayed attention has created. But we must not, on the other hand, underestimate the rapidity with which development of traffic can be expedited through the development of facilities for handling the traffic (including requisite cold storage), and through making known, by all the sources that are open to the energetic administration of harbour commissions, in the shipping exchanges of the world, and to shippers, the facilities that are offered at any given port.”

“Mere reiteration of such a general slogan as ‘Canadian trade for Canadian ports’ may stir sentiment (and we are not belittling sentiment, although its business value must

not be exaggerated), but it will certainly not develop traffic beyond the point at which there are facilities to deal with the traffic and there is organization to ensure the regulation and flow of the traffic, or beyond the point at which these facilities and that organization both from the point of view of land and sea transit, can place goods in the markets of the world on a competitive basis."

THE CANADIAN NATIONAL RAILWAY COMPANY

The design of Confederation involved the operation of the Intercolonial Railway by the Government of Canada. The provinces were willing to entrust the Dominion with that operation. The Dominion was the only agency which could make the operation of the Intercolonial Railway a part of the general improvement which was required for the development of the trade between the Great West and the Seaboard.

For a long time the Intercolonial Railway was so operated. The Dominion had control constantly. The management was under the direct supervision of the Department of Railways and Canals.

There was no authority in the Government of Canada to relinquish that control. It was a part of the Confederation arrangement. If the provinces had entered into a legislative union the Dominion could enact laws binding upon the provinces as effectively as the provinces now can with reference to the municipalities. But this is not a legislative union. It is a Confederation. The provinces were joined in a Confederation. Each province was a unit in that structure, and independent sovereignty and not subject to the legislative jurisdiction of the Dominion Parliament.

When Parliament relinquished control of the operation of the Intercolonial Railway and passed the same over to a private corporation, it went far beyond the powers which it possessed under the constitution. The Canadian National Railway Company operates many railways and in some of these railways there are private shareholders. It is therefore incumbent upon the Canadian National Railway Company to operate all its railways commercially with a view to dividends, if the same can possibly be

earned. The control is absolutely placed in the hands of this private corporation and the Dominion Government has no power to interfere with the management by that corporation. The corporation is operating that railway and other railways, not with reference to the rights of the Maritime Provinces under the Confederation system, but with the object of showing results in the same way as any private corporation.

This is only another instance of the attitude adopted by the Dominion with reference to the rights of the Maritime Provinces

SUBMISSIONS

We therefore submit that a recommendation be made that the Dominion forthwith provide a schedule of freight rates based upon what was designed at Confederation and not upon exclusively commercial considerations; that the jurisdiction over rates on the Intercolonial Railway be removed from the control of the Railway Commission; that there should be a subsidiary management of the Government Railways in New Brunswick established at Moncton, authorized and instructed to carry out the terms of the Confederation Agreement; that improvements be made in the facilities at the ports of the Maritime Provinces, shipping connections established and ocean freights arranged in order that the trade between the Great West and the Seaboard may be fully developed and that the Province of New Brunswick should receive some compensation for its loss by reason of the non-fulfillment of the obligations of the Dominion.

The Government of Canada is charged with the responsibility of maintaining the prestige and dignity of the King as the fountain of justice and so soon as the real intention of those provinces which originally entered into the Union is shown, as we submit it has been shown, such intention should be carried out.

Acting on behalf of the people of New Brunswick who have entrusted us with the administration of the affairs of the Province, we have felt it to be our duty to present this claim for the consideration of the Commission. We have not attempted to fix the amount of any compensation but it is hoped that through the information to be obtained by the research staff of the Commission there may be a fair basis provided upon which compensation may be recommended.

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